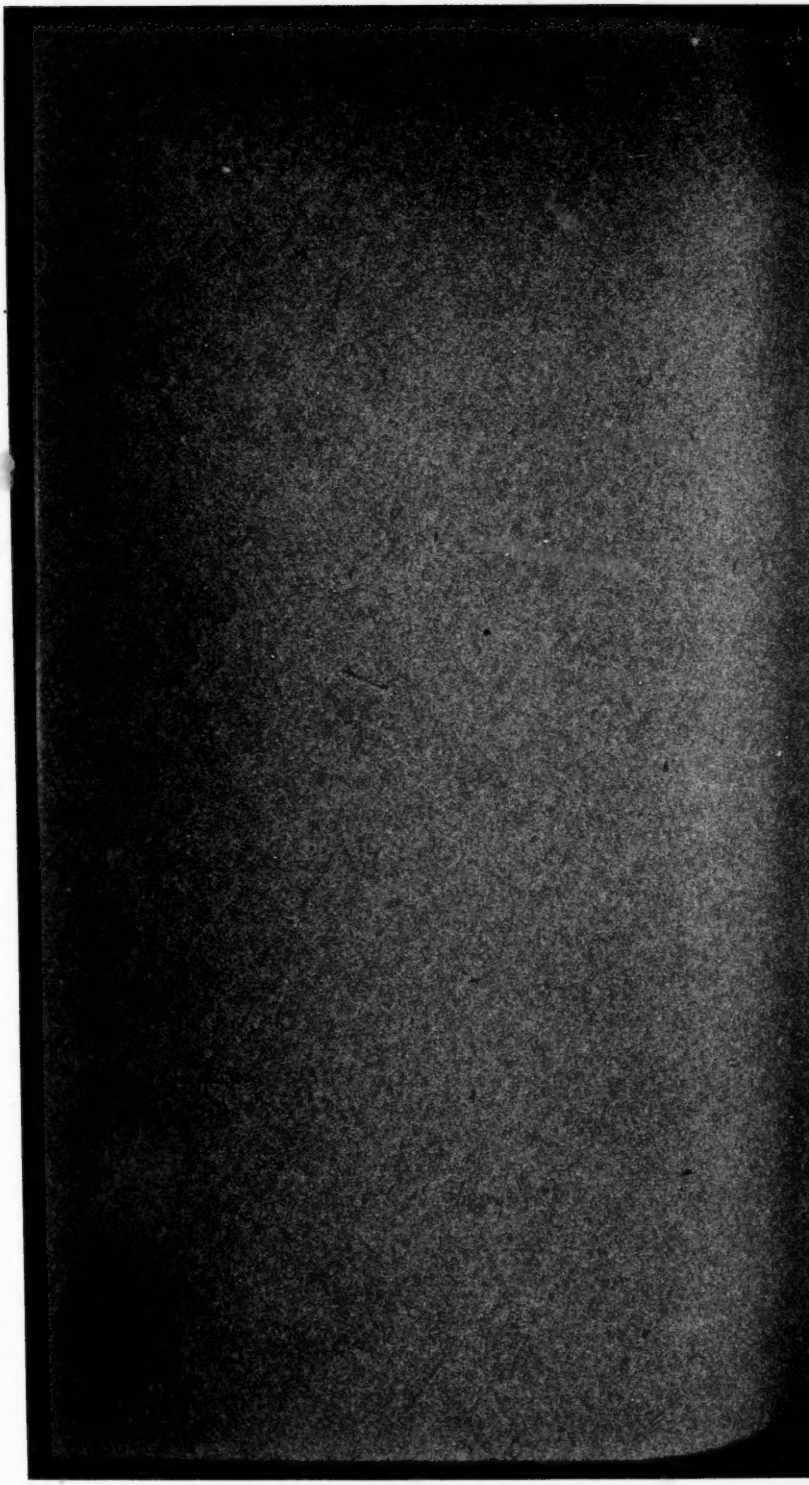

APPENDIX A.

IN THE HOUSE OF LORDS.

Friday, 18*th March*, 1910.

Lords present—

THE LORD CHANCELLOR (LORD LOREBURN),
LORD MACNAGHTEN,
LORD ATKINSON,
LORD COLLINS, and
LORD SHAW OF DUNFERMLINE.

BETWEEN

LECOUTURIER and OTHERS.....*Appellants*

AND

REY and OTHERS.....*Respondents.*

LECOUTURIER and OTHERS.....*Appellants*

AND

REY and ANOTHER.....*Respondents.*

[*From the Shorthand Notes of Cherer, Bennett & Davis, 8, New Court, Carey Street, W. C.*]

SIR ROBERT FINLAY, K. C., MR. UPJOHN, K. C., and MR. SEBASTIAN (instructed by MESSRS. STEAVENSON & COULDWELL) appeared for the Appellants.

MR. P. O. LAWRENCE, K. C., MR. YOUNGER, K. C., and MR. SARGANT (instructed by MESSRS. HOLLAMS, SONS, COWARD & HAWKSLEY) appeared for the Respondents.

The ATTORNEY GENERAL (SIR W. S. ROBSON, K. C.) and MR. AUSTEN CARTMELL (instructed by the SOLICITOR TO THE BOARD OF TRADE) appeared for the Crown.

JUDGMENT.

LORD MACNAGHTEN: My Lords, your Lordships, I think, are all agreed in holding that the decision of the Court of Appeal in both these cases is perfectly right.

The facts are not in dispute. The principle of law on which the Respondents, who were Plaintiffs in the action, rely, is well settled. It has been recognised and asserted over and over again in this House. There is no feature of novelty about the case unless one is to be found in the circumstances which led immediately to this litigation.

A religious community of great antiquity, known as the Order of Carthusian Monks, had, until lately, its principal seat and its headquarters near the Dauphiné Alps, not far from Grenoble in the Province of Isère in France, at a Monastery known as "La Grande Chartreuse." There was the residence of the Prior-General of the Order, and there was manufactured according to a secret process, a liqueur of several sorts and colours known all over the world as "Chartreuse." To this trade name and to the insignia by which they designated their manufacture the Monks had vindicated their exclusive right in many law suits in England, and they possessed several trademarks on the English register standing in the name of their procurator Abbé Rey.

In 1901, there was passed in France, a law called the Law of Associations, which declared illegal all unlicensed religious associations failing to obtain within a limited period authorisation from the State. The Monks of La Grande Chartreuse applied for the requisite authorisation but they did not succeed in obtaining it. Thereupon, in due course the Monastery of La Grande Chartreuse, with its dependencies in France, was dissolved. The monks were forcibly expelled from the country and all their property in France, including their distillery and their French trade marks, was confiscated and sold. The particulars of the sale purported to comprise the commercial business of the monks and "the customers and goodwill attached to the business." But two things that belonged to them—the secret of their manufacturing process and the reputation which their liqueurs had acquired in foreign countries, and notably in England—were incapable of being seized or confiscated. Expelled from France and exiled from their old home, the monks of La Grande Chartreuse carried with them the secret of their manufacture, and the power of securing the benefit of the reputation which their skill had gained for them abroad.

After their expulsion from France the monks of La Grande

Chartreuse transferred the headquarters of their Order to Lucca, in Italy, but they set up their business in Tarragone, in Spain. There, having made an arrangement with the Respondents, La Union Agricola, for the disposal of their output for a term of years, they commenced to make their liqueurs in the old way according to their old and secret process. The secret was jealously guarded and the manufacture was carried on throughout the whole process by the monks themselves. The liqueurs so made bore the insignia of the Carthusian Order and the old trade marks and labels, the only difference being a note to the effect that the liqueurs were now made at Tarragona.

Then followed a warfare in England waged with varying success. On the one hand were the Monks and La Union Agricola, on the other M. Leconturier, the liquidator appointed by the French Court to wind up the affairs of the dissolved monastery, and with the liquidator were the purchasers from him calling themselves La Compagnie Fermière de la Grande Chartreuse. The Monks fought to preserve the remnant of their property, which was beyond the reach of French law. The liquidator and the purchasers from him, who were not in possession of the Monks' secret, strove to supplant them in the English market by adopting their insignia, and representing that that they were the proprietors of the "genuine" liqueur "the old and world-renowned liqueur 'Chartreuse.'"

At the outset the monks were victorious. On the strength of the trade marks, registered in the name of their procurator, they stopped the importation into England of goods bearing their insignia and got up so as to represent or counterfeit their manufacture. Then by a contrivance which it is difficult to reconcile with the actual truth, the liquidator procured the English trade marks to be transferred to him, on the allegation that he was the assignee of Abbé Rey. This manœuvre turned the scale in favour of the Appellants, and the monks in their turn were prevented from using their old trade marks in England. The monks then brought this suit, and, at the same time, moved to expunge the last entry from the Register of Trade Marks. The Court of Appeal has decided in their favour; and the liquidator and the purchasers from him are now the Appellants.

The only plausible ground of Appeal urged at the Bar was

that under French law, and by reason of their purchase from the liquidator, the Appellants were justified in doing what they have done. To me it seems perfectly plain that by the very nature of things a law of a foreign country, and a sale by a foreign court under that law, cannot affect property not within the reach of the foreign law, or the jurisdiction of the foreign court charged with its administration. But it is certainly satisfactory to learn from the evidence of experts in French law that the Law of Associations is a penal law—a law of police and order, and is not considered to have any extra-territorial effect. It is also satisfactory to find that these legal experts confirm the conclusion which any lawyer would draw from a perusal of the French Judgments in evidence in this case, that the sale by the liquidator of the property bought by the Appellant Company, has not carried with it the English trade marks, or established the claim of the Appellant Company to represent their manufacture as the manufacture of the monks of La Grande Chartreuse, which most certainly it is not. I think both Appeals must be dismissed with costs.

Lord ATKINSON : My Lords, I concur.

Lord COLLINS : My Lords, I also concur.

Lord SHAW of DUMFERMLINE : My Lords, the Appellant, Mr. Henri Lecouturier, in his Statement of Defense, sets forth that he " is a French Judicial Officer, and in all his acts complained of in this action he has acted under the direction of the French Courts having competent jurisdiction, and in accordance with decisions given by them for the purpose of carrying into effect the enactments of the Legislature of the French Republic." He has, it is added, no personal interest in the matter. M. Lecouturier has sold the liqueur business in France with the trade marks in England to the Compagnie Fermière at La Grande Chartreuse, which company joins with him in his defence. The other Defendants are his agents in this country.

The Plaintiff and Respondent, Celestine Marius Rey, was for many years the Procurator of the Carthusian Order of Monks, residing at the Monastery of La Grande Chartreuse near Grenoble in France. Herbault the other Plaintiff and Respondent, is the General Superior. They sue this Action on behalf of themselves and all the other members of the Carthusian Order. That Order is a religious society founded

in the Eleventh Century, and it is said to hold or to have held property in various countries, including France and England. Part of that property consists of the Monastery of La Grande Chartreuse. It is maintained that the Order is in possession of a secret process or recipe for the manufacture of the liqueurs called "Chartreuse," and it is not disputed that the business of manufacture has been conducted by the Monks in that locality, that a trade of a profitable nature and of large dimensions has been built up in these articles, and that sales thereof have been conducted for many years past not in France alone, but in other countries of the world. In some of these countries trade marks for the liqueurs have been obtained. One of these countries is England.

One of the chief points to be settled in this case is as to the effect of a law passed by the Legislature of the French Republic, on 1st July, 1901, and amended on 4th December, 1902. A translation of this with certain brief supplements appears among the papers, as also a translation of decrees of 16th August, 1901, by Monsieur Loubet, French Minister of the Interior, made pursuant to Articles 18 and 20 of the law of 1st July. My Lords, the law and decrees cannot be perused without a consciousness of the importance of the subject-matter with which they deal, touching, as they do, at various points, the structure and development of French society and affecting its law and the property of French subjects in much detail. My Lords, the "comity of nations" is an expression which is familiar but necessarily indefinite. The attempts to fix it down into a set of rules of legal or binding effect, and the discussions which have accompanied such attempts, have been very fruitless. But (bearing in mind that we are dealing in the present case with the relations of French citizens, and a business whose centre was, and whose conduct was mainly in France) I take it at least that that comity tends towards encouraging the co-operation of civilized communities by giving effect, so far as may be, to the regulation by the Legislature and courts of the domicile of the parties, of the relations and rights of these parties. Such regulations should, upon all suitable occasions, be treated with most favourable regard, and with the desire to respect and apply the principles from which, so to speak, the central propositions emanate, so far as these can be

accommodated to the practice and requirements of foreign judicatures. Nothing, my Lords, in the slightest degree inconsistent with this appears in the judgments of the Court below, and I proceed further to say that I think it would be, so far as I can see, not acting in accordance with the true meaning and effect of the French Legislature and decrees, but acting contrary to that meaning and effect, to give them the application, beyond the territory of the French Republic, which is desired in this case.

Throughout all the legislation as to the necessity for associations being sanctioned after application by the Government, as to no religious congregations being formed (Article 13) "without an authorization given by a law which will determine the conditions of its work", as to the *ipso facto* dissolution of congregations not so authorised, and as to the sequestration of the effects and the appointment of an administrator and liquidator, and particularly throughout the regulations as to the conduct of the liquidator, the court to which he is answerable, and the realisation and distribution of property ingathered by him, I cannot trace anything, either express or implied, which suggests extra-territorial operation. And beyond the regulation of property within France as part of a scheme for dealing with a question reckoned to be of great social import in that country, I do not discern any intention, either expressed or implied, by the legislation or decrees to effect the transfer, or affect the holding of property in other countries to which the social and political problems, as French problems, did not extend. In short, and to take the present as an instance, I do not see anything conferring upon the liquidator of the property of the Carthusian Order a right to strip that Order of their possessions in all parts of the world. I do not think that what the French Legislature did can be read in this extreme sense. Whether effect would have been given by foreign courts to such legislation is, therefore, a question which does not really arise.

The species of property which the Respondents maintain are embraced within that committed to the Appellant, by his appointment of liquidator of the effects of the Carthusian Order, are certain trade marks registered in England. He has produced before the Register of Trade Marks the decree

of his appointment, and caused an application to be made at the British Patent Office for the entry of his name in the British Register of Trade Marks, as "the subsequent proprietor of the trade marks registered there on behalf of the said dissolved congregations" (all of which referred to the Grande Chartreuse), and such entry was made on the 2nd day of May, 1905. It is, of course, admitted that the formality of registration cannot effect the fundamental rights of the parties as they fail to be determined in this action.

The object of the action is to obtain an Injunction to restrain the Defendants from using the word "Chartreuse" in connection with the sale of liqueurs other than those manufactured by the Plaintiffs. The second portion of the Injunction is against the ordinary case of passing off the liqueurs manufactured by the Defendants as the manufacture of the Plaintiffs. The true question is: "Who is entitled to use the term 'Chartreuse' as denominative of a special manufacture of liqueur?"

My Lords, having given much attention to the proof, I am of opinion that a sound Judgment thereon has been given by the Court of Appeal. I cannot presume to put my opinion otherwise than in these sentences of the Lord Chief Justice of England, which I respectfully adopt: "I have not the slightest doubt that for a great many years before 1901 the word 'Chartreuse' or 'Grande Chartreuse' had acquired in the English liqueur market the secondary meaning that it was a liqueur manufactured by the monks of the monastery. Whether or not the monastery included the distillery, whether it included the outlying buildings, and whether the final product put into the bottles was actually bottled at the distillery or at the monastery is, to my mind, absolutely immaterial. It seems to me that what anybody would have understood it to mean would have been liqueur manufactured by the monks of the monastery of La Grande Chartreuse."

That the liqueur was manufactured according to a secret process or recipe I hold to be proved. Whether the secret imparts any virtue to the liqueur, or whether the business and efforts of Lecouturier's assignees, working in the old locality, have succeeded in producing a liqueur as good or better,

appears to me to be irrelevant, and on that head I think that the Judgment of Lord HERSCHELL in the Yorkshire Relish case (*Birmingham Vinegar Brewing Company v. Powell*, 1897, Appeal Cases, page 710, at page 712) is entirely applicable. Whether, as Lord DAVEY in that case said, the two articles are "a wonderful match" does not seem to me to be in point, except in one particular which is not favorable to the Appellants. For, my Lords, the nearer you can bring in point of appearance, qualities or properties one article or set of goods of your manufacture to others already protected by a trade mark, the clearer is the duty to avoid representing your goods as those others. Nor do I doubt that the use of the word "Chartreuse" by the Appellants would of itself stamp the article which they produced with the reputation which it ought not to possess, viz., that the liqueur was made from the monks' secret recipe.

It is said, however, that these trade marks are the subject of assignment by virtue of the French legislation and Lecouturier's appointment under it. I have already dealt with that from the international point of view, but, my Lords, I desire to add this: in no view of that legislation could it be maintained that it transferred to a liquidator the secrets within the knowledge of the monks who have proceeded to foreign countries, and particularly in Spain, have put into operation these business secrets, and are manufacturing according to them. In short, the business of Chartreuse liqueur as such is carried on by them; and the English trade marks are, therefore, trade marks in respect of a thing the business in which is not and cannot be conducted by the Appellants. The trade marks are in the latter; the business in the monks.

My Lords, such severance is not legally possible. It was not possible before the leading English statute. As Lord Justice FRY remarks in *Pinto* v. *Badman* (8 Patent Cases, page 194): "It has been laid down by the clearest authority that a trade mark can be assigned when it is transferred together with, to use Lord CRANWORTH'S language, 'the manufacture of the goods in which the mark has been used to be affixed.'" And Section 70 of the Patents, &c., Act, 1883, provides that: "A trade mark when registered shall be assigned and transferred only in connection with the goodwill of the business

concerned in the particular goods or classes of goods for which it has been registered and shall be determinable with that goodwill." To maintain that there can be goodwill in a business, the secret whereof is not transferred, is, of course, out of the question.

My Lords, it is a significant commentary upon, and justification of, the view taken above with regard to the French legislation and decrees, that it seems to be in complete accord with the decisions come to upon the same topic by French tribunals. The Appellant, Lecouturier, was extremely uncertain as to whether he had any right whatever under the legislation and decrees mentioned to trade marks registered in foreign countries. On 26th December, 1905, he presented an application called "A Petition for Interpretation of Decision" of the Order of the Court of Appeal of Grenoble, of 19th July, 1905. Lecouturier states that the Judgment and Decisions vesting in him the Carthusian property "lack precision, inasmuch as they do not indicate with sufficient clearness that the assets of the liquidation comprise not merely the trade marks registered in France, but likewise the trade marks registered in foreign countries," and he asked the Court "to pronounce and declare by way of interpretation of its decision," that the latter trade marks were included.

The Court declined to grant the petition, narrating, among things, that: "It is not permissible for Judges, under the pretext of interpreting their decision, to make any modification therein or to add a fresh provision to them." The Court "Without taking into consideration the demand made by Lecouturier in his said capacity, declares it to be inadmissible," and condemned him in costs. It is true, my Lords, that that decision left it free to Lecouturier to take such recourse as he might think fit; but in the course of the narrative a most significant commentary is made upon the law of 1st July, 1901, by the learned Judges. It is in these terms: "The liquidator's claim to the ownership of the trade marks registered in foreign countries raises the question of whether the law of 1st July, 1901, which is an exceptional and police law, is operative or not outside the territory of the Republic." It is accordingly clear that when the English Courts are appealed to on the ground that the law of the Republic referred to operated a transfer of foreign trade marks, that is done in face of

a judicial declaration by high French authority that the law sought to be enforced abroad was an exceptional and police law. This has no remote bearing upon the general question and confirms, in my opinion, the conclusion arrived at by your Lordships.

I think it right further to add that what appears to me to have been very near to the question raised in this case has also been settled adversely to the Respondents in the Courts of France. When the monks migrated to Spain and there set up the business according to their secret recipe, "La Union Agricola Sociedad Anonima" was formed for the purpose of conducting the trade, and the liqueurs manufactured in Spain were sold in bottles bearing the words "Les pères Chartreux." On 18th May, 1905, the civil tribunal of Grenoble pronounced judgment in a litigation upon this subject. That judgment narrates as follows:—"Whereas by application of the law of 1st July, the Grande Chartreuse mark may, indeed, have remained in the hands of the liquidator of the dissolved and expelled congregation, but the secrets or processes of manufacture were carried away by the Chartreuse monks as an indissoluble property, seeing that a non-patented process remains unknown, and the mark was thus separated from the product whose origin it had, until then, guaranteed. Whereas this special situation resulting from new legislation brings into presence on the one hand the liquidator who sells under the old Grande Chartreuse mark a product which is not manufactured by the Chartreuse monks, and on the other hand the Chartreuse monks, whose right to manufacture liqueurs according to their process Lecouturier admits, but whom he wishes to prohibit from using their name to characterise and distinguish the products manufactured by them. Whereas the mark is chiefly valuable through the product which it protects and not in itself without the product, although according to our law contrary to the legislation of other countries the product and the mark are not indissolubly bound together."

The finding of that Court was that the Union Agricola is entitled to use in its label the name "Pères Chartreux" in order to designate the manufacturers of the liqueur manufactured at Tarragona, and that they have not committed the misdemeanour of usurpation of name. Nothing, my Lords, could be clearer in the result than that the Tarragona manu-

facture by the monks and according to the secret is, according to French judicial opinion, not interfered with by the law of 1st July, 1901, and that even the products of that manufacture can be sold in France with the name "Les Pères Chartreux." The French Judges note the fact, which is in accordance with English law, that outside of France the business and the marks should go together. It is accordingly, in conclusion, my Lords, satisfactory to observe that the decision of your Lordships' House, far from being out of harmony with the lines of French procedure, whether judicial or legislative, appears to be in entire accord with its provisions and its limitations.

I agree in thinking that the decision of the Court of Appeal ought to be sustained.

The LORD CHANCELLOR: My Lords, I have very few words to add. I agree with the decision of the Court of Appeal. I desire to say that I do not think that any reflection rests upon the French Judicial Officer, Monsieur Henri Lecouturier, who is the Appellant in this case, but this property (for property it is) which has come in question in this Appeal is property situated in England, and must therefore be regulated and disposed of in accordance with the law of England. I am glad to think that in so holding we are not affirming anything inconsistent with the decisions of the French Court, to which we, of course, at all times desire to pay the most becoming respect.

Questions put in the First Appeal:—

That the Order appealed from be reversed.

The Not Contents have it.

That this Appeal be dismissed with costs.

The Contents have it.

Questions put in the Second Appeal:—

That the Order appealed from be reversed.

The Not Contents have it.

That this Appeal be dismissed with Costs.

The Contents have it.

[Here follows certification and legalization by the United States Vice and Deputy Consul-General at London, under date of March 24, 1910.]

APPENDIX B.

ROYAL COURTS OF JUSTICE,
Wednesday, 11th December, 1907.

IN THE SUPREME COURT OF JUDICATURE.

COURT OF APPEAL.

BEFORE THE LORD CHIEF JUSTICE OF ENGLAND (LORD ALVERSTONE), LORD JUSTICE BUCKLEY, AND LORD JUSTICE KENNEDY.

REY v. LECOUTURIER.

[*From the Shorthand Notes of Cherer, Bennett & Davis, 8, New Court, Carey Street, W. C., and Cock & Knight, Rolls Chambers, 89, Chancery Lane, W. C.*]

JUDGMENT.

THE LORD CHIEF JUSTICE: I regret to say that I am unable to agree in the conclusion at which Mr. JUSTICE JOYCE has arrived, and, inasmuch as the action of the Comptroller in refusing to expunge the last entry is not attempted to be justified on any other grounds than those which Sir Robert Finlay and Mr. Hughes have urged in support of the general decision upon the Judgment, it is unnecessary for me to say more upon it. It seems to me to be a consequence of what I am about to say that the last entry, namely, that which purports to have treated the British trade marks in all those cases as being assigned to Lecouturier, must go off, leaving entirely open what may be done afterwards upon the Register, namely, whether the monks or those who represent their liqueur as being manufactured at Tarragona can be restrained from using the labels. I only have to refer to that incidentally in dealing with the other part of the case. So far as the Judgment is concerned, it will be to expunge that entry and that entry only.

I now come to what is the substantial question in this case, and I think it may be stated in this way: Had the trade

marks, and particularly the word "Chartreuse"—it is best to confine it for the moment to "Chartreuse"—in the year 1901 or 1903, for this purpose it is immaterial, but 1903 will do, acquired in England in the liqueur market a secondary meaning? And if it had acquired a secondary meaning, who was entitled to the benefit of the liqueur protected by that secondary meaning? And then, have the proceedings in France deprived the people who would be entitled to that benefit of the right still to possess it?

I do not know that everyone would state the questions in exactly the same way, but that is how they occur to my mind. After listening most carefully to Sir Robert Finlay's most just and proper criticism of the evidence, I have not the slightest doubt that for a great many years before 1901 the word "Chartreuse" or "Grande Chartreuse" had acquired in the English liqueur market the secondary meaning that it was a liqueur manufactured by the monks of the monastery. Whether or not the monastery included the distillery, whether it included outlying buildings, and whether the final product put in the bottles was actually bottled at the distillery or at the monastery, is, to my mind, absolutely immaterial. It seems to me that what anybody would have understood it to mean would have been liqueur manufactured by the monks of the Monastery of La Grande Chartreuse.

Now, really that is scarcely disputed upon the evidence here. I think Mr. Lawrence was entitled to say that there was practically no dispute in the matter. I refer to the only two passages of any importance in the evidence for the Defendants which seem to me to be the best that can be said for them. I refer to pages 90 and 91: "Now prior to 1903, when the monks left Chartreuse, was it well understood in this country that the Chartreuse which was sold was made by the monks?—Yes. Q. Would it, in your opinion, be a matter of importance to anyone now selling Chartreuse to represent that it was being made by the monks?—I do not think so. (Mr. Justice JOYCE): Did you hear the question?—I think I did, my Lord. (Mr. Younger): I will ask it again. Would it, in your opinion, be of importance to anyone selling Chartreuse in this country that he should let it be supposed that it was made by the monks as it always had been?—I do not think so. Q. Had

not their reputation of Chartreuse before 1903 been made exclusively by the reputation it made when sold here?—Yes. Q. And was not it known throughout this country to have been made by the monks?—Yes. Q. Was it not a valuable reputation?—Yes. Q. A very valuable reputation?—Yes. Q. And it was known and sold as Chartreuse, pure and simple, was it not?—It was." I do not think under cross-examination from a hostile witness that there could be any more clear admission that the secondary meaning to which I have referred was recognized in the market. At page 100 there are two questions put to Mr. Willis: they begin at Question 1199: "Have you any experience of the sale of this liqueur in England of Chartreuse?—Yes. Q. You have known of its sale for many years, I suppose?—Yes. Q. And usually asked for as Chartreuse?—Yes. Q. And known to you to have been the manufacture of the monks?—Yes. Q. And in your opinion known generally as the manufacture of the monks?—Yes."

If that had been the very first time that this question had been investigated, if there had been only the evidence in this case, it seems to me that it would abundantly support the view I have taken; but really we ought not to decide this case by assuming that this is the first time that the question has ever been raised. In one sense the evidence before Mr. Justice CHITTY is not before us, but we are entitled to see what was established before Mr. Justice CHITTY in the year 1896, that is five years before or seven years before this question could have arisen. I should like just to call attention to what he says in his Judgment at page 6 of the 13th volume of the Patent Reports: "The evidence as to the liqueur is entirely in favour of the plaintiffs, and is practically uncontradicted. The Plaintiff Doyle is merely the agent in this country for his co-Plaintiff; Grezier is the substantial Plaintiff. He is the Procurator of the Monastery, which was founded in France in the 11th century. The Monks have from a very early period made liqueurs at the Monastery. The materials used in and the processes of making the liqueurs and the elixir, are secrets which at present belong to the Plaintiff Grezier, and are confided to three other members of the Monastery only, who are employed by Grezier and are bound to secrecy." I wish to

say that I do not think this secret can be waved away by a wave of the hand, as it was by Sir Robert Finlay and Mr. Hughes. I think that evidence of gentlemen who came here and swore that up to the time of the dissolution of the Monastery, so particular was it, that only one man was allowed to know one-fourth part of the secret with the exception of the head of the Order, and that of Mr. Baume who came and said he only knew the four parts when they were confided to him when he went to superintend at Tarragona, is not evidence to be disregarded, and it is evidence of the same kind exactly as Mr. Justice CHITTY had before him. "The liqueur, until about the year 1850, was sold only in the towns in the neighbourhood of the Monastery. Since then, the manufacture and sale of the liqueur has been continuously growing, and is now very considerable. Since 1840, or thereabouts, it has been the continuous custom to attach labels to the bottles containing the liqueur made at the Monastery, the colours of the labels being green, yellow or white, according to the colour of the liqueur, and bearing the words or inscription 'Liqueur fabriquée à la Grande Chartreuse' (the words 'Liqueur' and 'Grande' being sometimes abbreviated), or simply 'Grande Chartreuse,' and a facsimile of the signature of L. Garnier. Since 1869, all the liqueurs have been put in bottles of a description then devised, with a bulge in the neck, an example of which is supplied by the exhibits. These bottles formerly had embossed, but now have engraved upon them the words 'Gde. Chartreuse.' Since 1850, the liqueurs of the Monastery, particularly the green and the yellow, have become well known in this country by the names of 'Liqueur de la Grande Chartreuse' and 'Liqueur fabriquée à la Grande Chartreuse,' and by the abbreviated names of 'Chartreuse' and 'Grande Chartreuse,' but more especially as 'Chartreuse.' These names are now of great commercial value."

Now, surely it is not saying too much to say that when we have that state of facts recognized after a full hearing of evidence by the learned Judge, unless the evidence in this case puts the meaning of the words on a different platform, it negatives altogether the suggestion that it merely meant made in the district. Sir Robert Finlay said that he understood Mr. Justice CHITTY to have found there was a district. I

really do not think he did; but even if he did, he did not find there was a district with reference to the passages to which I have been alluding; and whether there is a district or not, he is referring to the marks as being confined to the liqueur made by the Monks, and when he comes to deal with the matter himself, he says that any person ordering Chartreuse intends and expects to be supplied with liqueur made at the Monastery, and if they were to say "Chartreuse" on the label men would at once believe that they were buying the genuine liqueur of the Monastery. I cannot disregard that. If I deal with the passage as to "Chartreuse" or the Monastery as meaning the geographical place at which the stuff was made, then when we come to the Injunction which was read only a few minutes ago, it is quite plain that he was treating Chartreuse and the name Chartreuse as describing the thing which was made by the Monks and nothing else.

Now we come to the history of the trade marks, which is only important to see whether or not it in any way puts any different construction upon these words, because from the year 1876 there have been trade marks on the register, and I call attention to three. In the first place, there is the green label, "Liqueur Fabriquée à la Grande Chartreuse," "Louis Garnier" with the orb and "Louis Garnier" with the orb on the other side. In addition to that, there was what is quite independent of the label, and it has made a very great impression upon me, namely, the bottle, within the glass work of which there is indelibly forever fixed the words "Grande Chartreuse" and the seven stars and the orb, which were also registered trade marks. Now, of course, it is perfectly obvious that the labels may come off, or that they may be pasted over by the label of the particular man who wants to sell his liqueur, but there will always remain that in the bottle which will become or tend to become the name by which it would be known, the existence of the trade mark; and its use is, to my mind, the strongest corroboration of the view taken by Mr. Justice CHITTY, which I think was rightly taken, that the name "Grande Chartreuse" became to be attached, or "Chartreuse," as the name of the liqueur.

Now, Mr. Lawrence told us that the same conclusion had been arrived at by many well-known Chancery Judges. I have not investigated the well-known or not well-known, but I

am entitled to say this, that Sir Robert Finlay and Mr. Hughes, knowing that there are these other decisions, have not called our attention to a single one. It is not suggested that Mr. Justice CHITTY had not arrived at the right conclusion, and, therefore, we have got it that for a great many years this has been litigated in Great Britain—in England—and the rights of the people who possessed this recipe of the manufacture have been recognized, and it had been recognized that to their manufacture in England this name had been exclusively attached. We know also the same thing had taken place in America. We know also from the Judgment that was read that there has been litigation in America by people who had sought to imitate or use the name.

Therefore, if this question is to be decided apart from the effect of the French Judgments, there clearly could not be any question at all about it. Supposing, for the purpose of testing this question, that the monks of La Grande Chartreuse had moved their manufacture to another monastery, in France, or to another building in France not a monastery and had sold the fabric of the distillery, and had left the district of La Grande Chartreuse, and had gone on making the same liqueur in the same way, could it have been contended that a happy individual who was able to buy as old bricks and mortar the distillery at Fourvoirie could immediately call any liqueur he made there "Chartreuse," and have put that upon the English market in that name? Stated in that way, I do not think the case would be arguable.

Now, what is the effect of the French Judgments? I do not go back one bit from what I said to Mr. Hughes, but for the purpose of my Judgment I recognize that the French Courts have decided that the business carried on in France, and some goodwill of that business, passed to the Liquidator, passed to the State. Whether the gentleman was right in thinking that the debts due outside also passed, it is not important to inquire. I will not attempt to express any opinion as to how the French Courts would deal with these questions which arise before us, should they arise before them. It would be impertinent for me to do so, and I do not know how they would deal with them. I am certainly not satisfied that they have decided it, and I am certainly not satisfied that the judicial decision goes further than saying this: that whatever

was there was not Rey's, personally, but was the Monks', and whatever belonged to the Monks in France passed to the Liquidator. I think Mr. Hughes is right in that, at present, but, to my mind, that by no means shows, when the question comes to be litigated, what may be the rights of the people who are trying to sell the genuine liqueur in France. Now, what is the effect of this registration, and what is the effect of the use by the Fermiere Company, the assignees of Lecoutrier, of the word "Chartreuse"? It cannot seriously be disputed, on the face of the evidence in this case, looking at the history of the matter, that by using the word "Chartreuse," still more by using the old labels, they are attempting to get, for their new manufacture, the benefit, in England, of the old trade mark which was attached to the old manufacture, and of the reputation of the old trade labels. I attach no particular importance to the fact that they have put in "Lith. Grenoble," beyond calling attention to the extent to which it was thought desirable to imitate, so to speak, the exactness of the old label. Of course, if this Liqueur fabriquée à la Grande Chartreuse, which, in one sense, was not true speaking of the actual manufacturers, to distinguish it from the distillery and the Monastery, which nobody did—when once you get the fact that this label, known on the market as such was attached to this manufacture, when the article had, in consequence, become to be known as Chartreuse, and when the bottles in which it was contained contain the name "Chartreuse"—then it follows, of course, that that use of those bottles and the use of those labels and the use of the name would have the inevitable effect of giving Cusenier's Liqueur Jaune a position in the market which it would have no right to have, unless Sir Robert Finlay and Mr. Hughes are right in saying that because it is produced within those four walls, or within the particular district, that gives them the right to have that name or that, having purchased or got the benefit of the sale by the Liquidator of the French business, that gives them the right. No answer was given except the answer given by Sir Robert Finlay and Mr. Hughes to my question why they thought fit to put their liqueur into that shaped bottle—"because they had bought the bottle." Buying a bottle in France would have no effect on its use in England. Therefore, I am

driven to the conclusion that why they adopt that shaped bottle in England is because it is only a part of the reputation, and that they thought it absolutely necessary not only to have the shape of the bottle but to have "La Grande Chartreuse" on it and to put the 7 stars which now and for some 40 or 50 years have been used in connection with that. Now one cannot help feeling that if it was only for the purpose of what I have called "genuine competition," the Fermiere Company would not have abandoned the genuine liqueur Jaune name which is better, we understand, than the original Chartreuse, but would have been only too anxious to have kept up the liqueur Jaune name and would have avoided using that which so exactly represents the old manufacture.

Now what is the effect of the registration of their rights which are said by Mr. Hughes—I really do not wish to discuss that question whether it is one right or several—but what is the effect of their being upon the register? The effect of their being upon the register for this trade mark—taking this one particular bottle of the Grande Chartreuse and the stars, is that no one could use that bottle in England, they would be stopped at the Customs unless it was coming over for them. Then there is another fact to which attention has been called more than once. It seems to me that it ought to be quite impossible for the Defendants, the Respondents here, to be able to put out such an advertisement as that which I hold in my hand, which I call the green advertisement, and I desire to point out that the only justification for this advertisement is the presence upon the register of these trade marks in the name of Lecouturier. It cannot be contended that apart from their having got the trade mark rights out of the people who had them before, that they could have published such a label as this. "Chartreuse, the genuine liqueur manufactured solely at La Grande Chartreuse in France. In consequence of events not thoroughly understood by the public an increase of imitations has appeared. Therefore, the necessity arises to put consumers on their guard and remind them that Chartreuse, the incomparable liqueur, is made and can only be made at La Grande Chartreuse"—about as audacious a falsehood as you really could conceive. Then again: "When asking for Chartreuse insist upon seeing the well-known signature and name upon the label." What? Cusenier? Liqueur Jaune?

nothing of the kind, the orb and "Louis Garnier"—"which alone ensures your obtaining the old and world-renowned liqueur, Chartreuse." It seems to me that at least the arm of the law ought to be strong enough to prevent such an advertisement being used in order to push things which are not made in accordance with the old recipe, which do not require, if they are good, such misstatements about them, and it is only possible that that advertisement could be issued as long as there is upon the register the name of Lecouturier, and the Company Fermiere have the benefit of the registration. Even when they use the label, the old label, which by itself would have given the great part of the reputation to them, or some part of it, they added these words: "Shipped to the United Kingdom direct from the Monastery. None is guaranteed genuine in the United Kingdom unless bearing the label of which this notice forms a part." If the words "direct from the Monastery" did not lead people to believe that they were still being made by the Monks I do not understand what they could mean. Now it is said that it will not be possible for the Monks to use the old labels without some additions. That may be so, but we are not dealing with that in this case. As a matter of fact they did add these words: "This liqueur is at the moment, at the present time, being made at Tarragona." Whether that is enough or not we are not considering here; all I am saying is the fact that it may be necessary for the Monks to add something in order to show that the actual manufacture is somewhere else than at Fourvoirie, or rather at La Grande Chartreuse, does not give the Defendant any rights. Then it is said—Sir Robert did not put it, abandoned—but it was suggested that their rights had been affected by their adopting this "Liqueur fabriquée à Tarragone par les Pères Chartreux." In the first place, that was not done until after Lecouturier's name was upon the register; and, secondly, it was required, and only required, because they could not have possibly got any liqueur into England if they had attempted to send it in under the trade mark labels. It seems to me that when this case is understood the view taken by the American Court in the Judgment which I think was singularly concise and well-reasoned is absolutely right, and that the ordinary protection cannot be given to the industry of these gentlemen, the Monks, who

have been obliged to migrate to Spain and other countries unless the English law affords the same protection as apparently they can get in America and, for all I know, also in Germany. Sir Robert Finlay endeavoured to blow down the walls that were surrounding the other side by the Judgment in America, by the Tunis Judgment. It is perfectly obvious that the Tunis Judgment may have proceeded upon different lines, and certainly having heard it read it does not commend itself to my mind as an authority which we ought to follow in preference to the Judgment in the United States. As regards the actual form of the Injunction I would rather leave that to Lord Justice BUCKLEY. It seems to me that in all probability the Injunction ought not to be framed so as to prevent the Company Fermiere from telling the truth, it ought to be framed to prevent them putting a falsehood before the public in order to commend their wares to the British public.

In my opinion this Appeal must be allowed, and I have already said an Injunction granted in the form that Lord Justice BUCKLEY will state, and that the register must be rectified by striking out the alleged assignment of these trade marks to Leconturier.

Lord Justice BUCKLEY: I am of the same opinion. When the facts of this case are appreciated and the point is reached, the case is not to my mind one difficult of decision. I will first say a word upon the French Judgment. The parties who are here before us are all persons amenable to the law of France who were parties to the litigation resulting in those Judgments or deriving title under parties who were before the French Court. We are, I think, bound to take that Judgment as being between the parties before us a binding Judgment. Looking at the first Order, the Order in the Court of First Instance, on the 23rd April, 1904, at page 138 of the first volume of the documents that Judgment affirmed, I think this, that the business of manufacturing liqueurs which was carried on at La Grande Chartreuse, and the goodwill and the ownership of the trade marks, and the exclusive right to the use of the name of Louis Garnier, were the property of the Congregation of the Monks, and were not the property of Rey, with the result that on the law of 1901 taking effect, all that property passed to the Liquidator who was appointed under that system of legislation. That Order was

affirmed on the 19th July, 1905, and further affirmed in the Court of Cassation on the 31st July, 1906. It seems quite plain what the French Court was adjudicating upon was this: it was a dispute whether Rey, a natural person, or the Congregation of the Monks, who were amenable to the law of 1901, was the person entitled to the property, and the Court was affirming that it was not Rey but the Monks who were entitled, with the result, of course, that the law had operation upon that property. The matter is made exceedingly plain that that was the real matter in dispute by looking at what the Court of Cassation did at page 346 of the second volume. That contains this recital: "Whereas as well in the first instance as on appeal the argument has exclusively related to the point whether the property in the business of the Chartreuse with all its accessories should be preserved for the Abbe Rey by virtue of the deed of the 20th November, 1897, or attributed to the Liquidator of the dissolved Congregation" —of course they held that it was the latter. They then go on to say this, which shows what they were not deciding: "At no time have the Judges of Fact been asked to determine the working conditions nor to see whether the working could be carried on without leading third persons into error as to the nature and quality of the product." It seems to me, therefore, that the French Judgment, which I think is binding upon all the parties before us, was subject to this limitation; in the first place that the French Court, of course, was not adjudicating upon subject matters over which it had no jurisdiction, it was adjudicating upon this business as carried on in France, upon the goodwill of this business as enjoyed in France, on the trade marks of this business as enjoyed in France, but of course the jurisdiction of the French Court could not run to determine what ought to be the contents of the English register of trade marks—it could not affect that in any way, nor if there was a goodwill in England as distinguished from a goodwill in France, could the Order in France affect that at all. That is the first limitation of it. The second limitation of the Judgment, I think, is this, that the French Court itself was saying: "What we are confining ourselves to is the decision of the question as between Rey and the Congregation who is entitled to this property, and we are not determining the

working conditions or seeing whether the working can be carried on without leading third persons into error as to the nature or the quality of the products": in other words, the Court of Cassation was by these words expressly leaving open the question which is now before us for decision. With that, I leave the French Judgment.

Now, of course, that is not the end of this matter; to my mind it has very little, if anything, to do with this matter. After that Judgment had been pronounced there passed to the Liquidator under the French law and from him to the other parties a business—this business at La Grande Chartreuse. After that had taken place the Monks who theretofore had carried on that business and from whom it had been taken by operation of law, were, according to our law, entitled to go elsewhere, and were entitled to carry on the identical business from which they had been excluded in France, were entitled to make the article which they had theretofore made, were entitled to say that they were carrying on business and that they were making the article, and offer it for sale, and to enjoy in connection with it such trade marks, if any, as the French Court had not handed over to somebody else. The only thing which they were not entitled to do was they were not entitled to say: We are carrying on the old business which by operation of law has been handed on to the Liquidator. So far for the Plaintiffs. Now, what were the Defendants entitled to do? The Defendants according to our law were entitled to say: We are the successors of the business heretofore carried on by La Grande Chartreuse, we enjoy the goodwill in France of that business, we ask you to buy from us as the persons carrying on that business; but they were not entitled to say if it was not the truth that they were making the article which the Monks had theretofore made, and they were not entitled to pass off their goods as being goods which were made by the Monks. What happened was this: The Monks removed themselves to Tarragona, and there carried on the business of making this liqueur, which, according to what I think upon the evidence, is shown to be a secret process; they were minded to carry on that business, and they got into difficulties in introducing their goods in this country for this reason that Lecouturier, the Liquidator under the French law, had by proceedings which are called into ques-

tion before us, got on the English register, and the Monks, therefore, could not bring their goods in here without doing something or other by way of ceasing to use the trade mark in respect of which Lecouturier had become registered. Under those circumstances they did certain acts which I need not detail, but which did not amount in any sort of way to any kind of abandonment of their rights. Lecouturier had got on the register on the 2nd May, 1905. The Monks, or rather the Plaintiffs, moved on the 20th May, 1905, to set the register right again, and issued their Writ in this present action on the 27th May, 1905. Of course they were asserting throughout those rights which we are asked to determine now, while they did not abandon in any way such rights as they had. They went on with their business, and their complaint in the present proceedings is that the Defendants are, so far as the ordinary action is concerned, passing off the Defendants' goods as if they were the goods of the Plaintiff.

Now, I am perfectly satisfied upon the evidence in this case and the exhibits that that is what the Defendants are doing. Having got upon the English register, they were entitled, I suppose, for the time being, at any rate, to use the English trade marks, and they used them. They added to them a statement: "This is shipped to the United Kingdom direct from the Monastery through Mr. Garrett of London, sole agent for the sale of the products of the Grande Chartreuse in Great Britain and Ireland and South Africa." They issued an advertisement in which, without reading it again, because the Lord Chief Justice has read it, they use these adjectives with regard to the liqueur "genuine," "incomparable," "old and world renowned," and said that by buying from them the purchaser can alone ensure getting that thing. They describe that article as being the genuine article. It seems to me that all that is directed to show or to lead the purchaser to believe that he was buying the article which had been known upon the market during the whole of that time. They also speak of imitations of the article which have appeared, and in connection with that they use the orb and the signature, Louis Garnier, which, of course, had in the minds of the public been throughout connected with the article as made by the Monks. It seems to me that in that the Defendants were representing

that they were making the article which the Monks made, and were not representing which they would have been entitled to do, that they were carrying on the business which they had got under the French law. The Monks when they left and went to Tarragona were entitled to take their secret with them. They took it with them, and they are carrying on from Tarragona a business in liqueurs. Now, of course, it is our law that a trade mark can only be enjoyed in connection with a business. It seems to me that the Monks were enjoying a business, in connection with which they can enjoy, if they are entitled to it, the trade mark and these various labels which have been on the register in respect of which Lecouturier has put his name on the register. They are carrying on a business in connection with which they are entitled to enjoy those trade marks if those trade marks are theirs. Now are they theirs? In my opinion they are. The French Court had no power at all in my view to determine as between Lecouturier and the Monks what was the right of the Monks in respect of the trade mark connected with the Monks' business, and I think they were entitled to keep them. It appears that Lecouturier obtained the insertion upon the register of an assignment which is expressed to bear date 8th December, 1904, when there never was any such assignment at all, upon the footing of an affidavit which referred to certain of the Judgments, but which affidavit, if I am right in my view of the Judgments, did not lead to showing that as regards the English trade marks Lecouturier had become entitled to them at all. It seems to me, therefore, as regards the Motion under the Trade Mark Act that that must succeed; that is to say that the last statement on the register, that on the 8th December, 1904, there was an assignment, must be struck out, leading of course to any subsequent alterations of the register by putting somebody else on that may be entitled. In the action it appears to me that the Plaintiffs are entitled to an enquiry as to damages, and an injunction, which I think should be in this form: An injunction to restrain the Defendants, their servants and agents from using the word "Chartreuse" in connection with the sale of liqueurs other than those manufactured by the Plaintiffs as the name of or as descriptive of the liqueur, or without clearly distinguishing the liqueurs so sold from the liqueurs manufactured by the

Plaintiffs and an injunction to restrain the Defendants, their servants, and agents from selling or offering for sale in this country any liqueur or other liquors not so manufactured in such a manner as to represent or lead to the belief that the liqueur or other liquors manufactured or imported or sold by the Defendants are the manufacture of the Plaintiffs, and I think the Plaintiffs are entitled to their costs of this action, and the costs of this Appeal.

The LORD CHIEF JUSTICE : Including what they had to pay to the Comptroller.

Lord Justice BUCKLEY : And the costs of the Trade Mark Motion.

Lord Justice KENNEDY : I am of the same opinion, and, as we are differing from the learned Judge below, I will very shortly state my grounds for concurring entirely with the Judgments which have been already delivered.

There is an action here to restrain the Defendants from doing that which if [is] commonly known as passing off goods which the public would suppose when buying them to be the goods of the other side. There is also a claim under the Trade Marks Act to expunge a certain entry relating to an assignment which appears upon the Register. Now, I am only going to state, without reference to the details of the evidence, the way in which the case presents itself to me. These monks, these Carthusian Monks, did, in fact, have this settlement in the Chartreuse or La Grande Chartreuse district; they manufactured by a process known to them a certain liquid which has become famous as " Chartreuse " ; for many years past, certainly at the time of the Judgment, to which I shall refer, of Mr. Justice CHITTY, in January, 1896, that particular article had a hold upon the market as the manufacture of the Carthusian Monks. Whether the Carthusian Monks were so called originally from an earlier geographical title of the place where they were and where they manufactured, seems to me immaterial. In fact, the product of their industry had acquired a commercial character by the designation of " Chartreuse," and that designation meant to the public an article manufactured by the Monks according to the process which they used, and there it is, it seems to me, with great respect to the learned Judge below, that he has taken a view which upon the evidence appears untenable. In

substance he has attached a value which I do not myself think ought to attach to the mere locality at which the works were carried on, and to the product so manufactured. And as the article had become, whatever might have been the origin either of the name "Chartreuse," or of the manufacture itself—a title describing a liqueur so manufactured by these persons as Mr. Justice CHITTY said in the case of *Grezier & Doyle v. Autran*, the name used in substance is the name of the maker. If that be true then when by the French Judgment M. Lecouturier and his assignees obtained whatever they did obtain under the Statutes and Ordinances of the French Government, all that they got was without that which the present Plaintiffs retained and retain. They got whatever they took there without the power of manufacturing by the persons who had manufactured before, and without the process by which they had manufactured, and it seems to me that according to English law it is clear that there was nothing whatever to prevent the Carthusian Monks carrying their manufacture to another country, carrying the process which they had used and used alone in the manufacture of the known article, and that it is impossible because of anything that happened in France, for the present Defendants to say: "We have acquired that by the artificial transaction," if I may call it so, which in fact they had not got, namely, the process or manufacture of the article. Even if it had been a voluntary cession—a voluntary transfer—these Monks would have been entitled as long as they did not represent that they were acting in the name of their old business, or represent themselves as continuing a business which they had ceded—they would not have been prevented from carrying on business in competition. Here it seems to me that all that took place was what I may call an intra-territorial transaction giving the purchasers through M. Lecouturier certain rights in France, but in no way a transaction affecting that which we have to consider—the rights as regards the protection of the public and the private rights also of the owners so far as the trade marks are concerned in this country. What the Defendants have done is, after the cession which they obtained through the purchase from M. Lecouturier, from the Liquidator, to put upon the English market an article as to which I am not going to repeat the ad-

vertisement which has been already read, but they put an article in a form which was coupled with the description advertised and actually engraved on the bottles—a thing which unmistakeably must lead the buyer, I should think, to suppose that he was still getting that which had become a known article, taking its merit and its reputation from the Monks. I, in that way, again cannot follow the learned Judge below on the evidence before us when at page 141 of the printed Judgment he says: "There was nothing further from the contemplation of either party than that their Chartreuse should be passed off as the product of the other, or be purchased as or for the other." If by that is meant that M. Lecouturier was not seeking to say that what he was selling in this country had been manufactured at Tarragona, no doubt that is perfectly true, but if it means that he did not mean that he was not contemplating, or rather those who represent him were not contemplating that what was going on to the English market should be bought as being the product which had acquired the commercial designation of Chartreuse, that is a thing which was manufactured by Carthusian Monks and manufactured according to their process, I am at variance entirely upon the question of fact. It seems to me plain that what the Defendants desired to impress upon the public was: "You are getting the thing which the Carthusian Monks manufactured by their process," and it would have been perfectly useless to state the fact: "We are not using the process, we are not using that which is manufactured by Carthusian Monks, but we have bought the locality in which the articles were produced before; we have bought the buildings, and so far as we could the plant and the business in France, whatever that may mean, which we must admit does not include the process, and does not include those who manufactured it before and whose hands produced the article." If that be so, it seems to me that we have to deal with a case in which it is shutting one's eyes to the facts not to see that what is being done is a representation that the thing which is being put upon the market is something which it is not, and that there is an injury of which the Plaintiffs have a right to complain, who have continued to make, though in a different place of business in which they manufacture, the article which they manufactured before, and

which is represented by the Defendants untruly to be manufactured by them.

I do not think that more can be said with regard to what took place in France than this which is put in the Judgment of the American Court, and I think put as well as it could be, and that is that the Liquidator and all claiming under him are rivals in business enjoying the advantage of Government protection in the country of his appointment. But that cannot justify him here when the Plaintiffs who have a right to have their trade here protected have proved, as they have done to my satisfaction, that a thing is being sold by him which has never been produced by him, and which he cannot claim the right to say that he has produced merely because he has obtained what—under the act of the Government he has obtained in France as regards the rights of business there.

With regard to the trade mark, it seems to me to follow the other portion of the case in this sense, that all that is being asked here is to expunge that last entry. Whether the other entries there now can stand and can now be used under changed circumstances is another and a different matter. The Plaintiffs have shown upon the face of their labels, and rightly shown, that the manufacture is now being carried on at Tarragona, but all we have to say is that I think we ought to accede to the Plaintiffs' argument on that point, that this last assignment, as it appears in the Register, should be expunged.

As regards the form of the Injunction, my brother Buckley has dealt with that, and it only remains for me to say that I agree entirely with the Judgment.

[Here follows argument on costs, &c., then certification, and legalization by United States Consul-General at London under date of Jan. 13, 1908.]

APPENDIX C.

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

MARCEL MARIE GREZIER,
Procureur,

vs.

JOHN B. GIRARD.

Upon reading and filing motion for an injunction herein and due proof of service with the affidavits on behalf of the complainant annexed thereto, and upon hearing counsel for the parties and the same having been duly considered by the Court, and it appearing that the complainant is entitled to the exclusive use of the word "Chartreuse" accompanied by a fac-simile of the signature of L. Garnier as a trade-mark for cordial or liqueur in the form and manner described in the bill of complaint herein and shown in the exhibits forming a part thereof; and it further appearing that the respondent has violated and infringed the rights of the complainant in and to the said trade-mark by the sale of bottles of cordial bearing an imitation of said trade-mark as charged in the bill herein.

Now, therefore, it is hereby ordered, adjudged and decreed, that an injunction be issued forthwith, pursuant to the prayer of the bill herein, strictly commanding and enjoining the said respondent said John B. Girard, his clerks, attorneys, agents, servants and employees, under the pains and penalties that may fall upon them, and each of them, in case of disobedience, that they forthwith and until the further order, judgment and decree of this Court, wholly desist and abstain from in anywise, directly or indirectly, selling or causing to be sold any cordial or liqueur, or any compound of

liquor purporting to be cordial or liqueur, in bottles, flasks, or other receptacles, having applied or attached thereto in any form or manner the said trade-mark of the complainant or any reproduction, counterfeit, copy or imitation thereof whatsoever.

N. SHIPMAN,
Judge.

[ENDORSED:] 7-395—Grezier v. Girard.—Filed April 13, 1876.

A Copy:

JOHN A. SHIELDS,
Clerk.

APPENDIX D.

Review of Judgments Rendered in France.

For the information of the Court we give here a brief of the various judgments of French Courts relating to the Carthusians and their properties in France.

1. *Judgment of the Civil Court of First Instance of Grenoble of March 31, 1903.* (Defendant's Exhibit, R., p. 1502). The Procurer of the Republic addressed to the President and Judges composing this Tribunal a petition showing (p. 1503):

> "That the association known under the name of Chartreux, a non-authorized religious congregation whose principal monastery is situated at *St. Pierre de Chartreuse* in the jurisdiction of this Tribunal has been refused the authorization which is solicitated (Session of the Chamber of Deputies of March 26, 1903) that under the terms of Article 18, paragraph 2, of the law of July 1, 1901, it is held dissolved by law since 28th March; * * * in view of the decree of August 16, 1901, passed for the execution of this law: the undersigned requests that it please you to name M. Henri Lecouturier, judicial administrator of the Tribunal of the Seine, rue de Pont

> Neuf 16, sequestrating administrator and liquidator of the property of the Congregation called des Chartreux, not only the properties situated and held at the principal monastery at *St. Pierre de Chartreuse*, but also those held by the said congregation **in France** at its different establishments" (emphasis ours).

The judgment proper recites what has been set forth above, grants the petition, makes provision for publication of the judgment, the expenses of the liquidation to be advanced by the public treasury, and then orders that the judgment be executed.

It will be noted that the petition prayed only for the appointment of a liquidator over the property held by the Congregation *in France*. Subsequently, this same Tribunal, "*by extension of the powers previously conferred upon him*," granted to Lecouturier an Order in Chambers extending his authority so as to embrace foreign trade marks, but this last-named order was *annulled* by the Court of Appeals of Grenoble. The Courts of France have therefore simply given the liquidator authority over the property actually *in France*. Excepting, of course, the one Order in Chambers already referred to, but which was later annulled—the whole series of orders and judgments rendered in France will be searched in vain in an effort to find any contradiction of the above statement.

2. *Order in Chambers of May 17, 1904.* (Defendant's Exhibit, R., p. 1551). The first few pages of this order are a recital which it is not here necessary to consider. On page 1553 it appears that, by writ, Lecouturier, as liquidator, summoned Abbe Rey before a judge in chambers to compel him to turn over to the petitioner, or to his representative, the keys of the factory at Fourvoirie, together with all the books, &c., of the business there carried on.

On pages 1554-5 the order says that it is

> "certain that there is to-day extreme urgency that the mark of la Chartreuse, *on the ownership of which nothing is yet definitely adjudged*, should be protected for the benefit of those legally entitled thereto against imitations." (Italics ours.)

In the next paragraph the order goes on to recite that there was actually pending at that time criminal prosecutions for imitations of the Chartreuse marks, in which Abbe Rey (the putative legal owner of the mark in France) refused to intervene, showing the need of designating a temporary custodian of the mark *in France*, for the sole purpose of conservation of the property. Of course, no such need exists in this Country whose Courts are open to the Monks.

On page 1557 begins the judgment proper, which reads as follows :

> "Therefore, we, * * * * as provisional and urgent measure *without prejudging anything*, authorize Lecouturier in his capacity of Liquidator and administrator of the Congregation of the Chartreux to take actual possession by virtue of article 18 of the Law of the 1st of July, 1901, of the factory at Fourvoirie, and of the business there carried on, with all its dependencies ; we therefore decree that Abbe Rey shall be required to hand over to Lecouturier or his representative the keys of the factory, together with all the books, documents, and papers relating to the business in question, and all the trade-marks belonging thereto, and that the Liquidator may, if required, seize them by calling upon the assistance of the officers of the public force, so as to be able to proceed to all measures of maintenance and administration which he believes to be useful. * * * We declare this judgment subject to immediate execution, notwithstanding appeal."

The substance of this judgment is that it authorizes the Liquidator to take charge of the trade marks for the purpose of *protecting them from such damage as might be suffered for lack of the presence of a legal owner in France to prosecute infringers.* No reference was made to foreign marks, and the purpose of the judgment shows that these were not in view at all.

The judgment, however, is highly important as showing that the reason which moved the French Courts to place the trade-marks temporarily in the hands of an officer of the Court was that otherwise infringements of those marks could not be

prosecuted. Such reason does not exist in this country. An examination of this judgment shows that defendant can find in it no color of authorization for the business which it is attempting to carry on in this country.

The liquidator was appointed and authorized to *prevent* infringements of the trade-marks in France, not to *promote* the infringement of trademarks in the United States and elsewhere.

3. *Judgment of the Civil Court of Grenoble of April 23, 1904.* (Defendant's Exhibit, R., p. 1506.) This suit was brought by Lecouturier, as liquidator and receiver, against Rey, ex-Procureur of the Order of Carthusian Monks. Gervais Garnier intervened, claiming to act as assignee of the rights of Louis Garnier, a former Procureur of the Order. Bonal & Son also intervened. As both of these interventions were dismissed, it is not necessary here to give them any consideration, particularly as they have no bearing on the present case.

After the judgment of March 31, 1903, appointing Lecouturier the liquidator of the property of the Order *in France*, " Rey pretended to be the owner of this business and to support this pretention he invoked a contract of Nov. 20, 1897 " (p. 1513, fol. 2001). Thereupon Lecouturier brought this suit to show that Rey was an interposed person, that the deed of Nov. 20, 1897, was of no legal effect, and that the property was in reality that of the Order.

On page 1512 begins a statement made by Lecouturier to the Court at the beginning of this action, in which is recited what had previously taken place, but in this whole statement not one reference is made to *foreign* marks or to the *foreign* business. Following this statement there are set forth certain facts regarding the interventions, etc, but it is not necessary to consider this matter as it is taken up again in the judgment proper which begins on page 1521.

Passing over some matters which are of no importance here we come, on page 1535, to a bit of interesting history:

> " That before the French Revolution, the monks of the Convent of the Grande-Chartreuse possessed a *manufacturing secret*, which they carried away with them at the time of their expulsion in 1792; that upon their return to France in 1816, and following upon a decision which granted to them the use of the convent

and buildings at Fourvoirie, they resumed the exploitation of their product, manufacturing, first, a green liqueur called "Liqueur of Health," then, towards 1833, a white liqueur called "Melisse," and finally about 1840, the yellow liqueur; that these successive liqueurs resulted from the *methods of fabrication, developed and perfected* by the Brothers and Fathers of the Grande-Chartreuse." (Italics ours.)

Here again it is recognized by the French Tribunal that as far back as 1792 the Monks "*possessed a manufacturing secret.*" We believe that it can be truthfully stated that this recognition of a secret is today of universal prevalence. The existence of such manufacturing secret is moreover, proved by the testimony in this cause.

On page 1541 is given an interesting account of the charitable works of the Order, more than three million Francs being devoted to this purpose.

On pages 1549–50 appears the judgment upon the action: It holds that everything which was the object of the deed of transfer of November 20, 1897, is in reality the property of the Order of Carthusians, the aforesaid deed being null and void as executed to Rey, an interposed person, or "passive trustee"; therefore, that such property forms a part of the assets to be liquidated,—the other "part of the assets" being of course the corporeal property actually seized by the Liquidator. The whole text of this part of the judgment is printed below. Rey appealed, and in consequence there was rendered the:—

4. *Judgment of the Court of Appeals of Grenoble of July 19, 1905,* (Defendant's Exhibit, page 1324, R.).

This judgment quotes the decree of April 23, 1904, last above mentioned, the main portion thereof being as follows (R., pp. 1327–8):

> "Holds that the business of the manufacturing of the liqueurs, elixirs and other products, carried on both at the Grande Chartreuse and at La Fourvoirie, under the commercial name of 'Liqueur fabriquée à la Grande Chartreuse, Elixir vegetal de la Grande Chartreuse, Produits de la Grande Chartreuse,' comprising the

clientele and fixtures, the ownership of the trademarks and commercial names serving to distinguish such products, the models of the bottles, flasks, and boxes and cases serving for the packing of the latter, the exclusive right to the use industrially and commercially of the name 'L. Garnier,' the furniture, the utensils of every kind used in the manufacture, the stock on hand, the primary matters, the manufactured products found within the shops, cellars and warehouses, and generally all other appurtenances or dependencies whatsoever of the said business—the object of the deed of sale of the 20th of November, 1897—are in reality the property of the Congregation of the Chartreuse, the deed itself being null because running to Rey a member of the Congregation whom the liquidator has by weighty presumptions detailed and substantiated established to be a person substituted for the Chartreux ;

" Holds in consequence the said business with all its accessories, therein comprised the trade-marks, to be property held by the congregation within the terms of article 17, paragraph 3 of the law of the 1st of July, 1901, and property to be considered a part of the assets of the liquidator ".

The Judgment concludes by dismissing Rey's appeal and " affirming the judgment of the Civil Court of Grenoble of the 23rd of April, 1904, the same to be executed according to its form and purport " (pp. 1344-5).

This is an affirmance pure and simple of the judgment of the Court below. We call special attention to the first paragraph quoted above and to the fact that not one word is said with respect to the *foreign* trade-marks. The judgment does not mention, and therefore cannot be regarded as deciding whether the marks attributed to Lecouturier were the French marks only, or included also the foreign marks. This was the Liquidator's view of the effect of the first judgment, and consequently after that judgment was rendered he applied to a Judge " in urgency proceedings " (" in Chambers ") and there was granted, upon such *ex parte* application :—

5. *Order in Chambers of February 15, 1905.* This order is not in evidence, but it is quoted in—

6. *Judgment of the Court of Appeals of Grenoble of December 12, 1905* (Complainants' Exhibit 22, R., p. 725), which was rendered on the appeal by Rey from the order below. The order recited (p. 727) :

> " *that by extension of the powers previously conferred upon him* * * * Lecouturier, in his capacity, has powers as administrator-sequestrator * * * to take all steps and to follow out all procedures tending to the transfer and to the registration in his name of the trade marks precedingly registered in foreign lands, notably in England and in the United States of America, in the name of Marcel Marie Grezier and that of Celestin Marius Rey, relating to the manufacture of the cordial called " Chartreuse." (Italics ours.)

By the granting of this order the Judge of the Civil Court recognized and stated that it was an *extension* of the powers previously conferred upon Lecouturier by the same Court in its judgment of April 23, 1904.

The Court of Appeals, however, *reversed* this order, holding (p. 730) :

> " That the application of Lecouturier raised the question as to whether the law of July first, nineteen hundred and one, controlled in foreign countries the properties of the dissolved congregations, and that this question was beyond the competency of the judge in the urgency proceedings ;
>
> * * * * * *
>
> " But whereas, on the second count, the application of the receiver, tending toward the recognition of his right to cause to have transferred and registered in his own name the trademarks registered in foreign lands, especially in England and in the United States of America, put before the Judge in the urgency proceedings the question as to whether the law of July first, nineteen hundred and one, which is a *law of exception*,

controls outside of French territory the properties of the dissolved congregations, or whether its action is limited to the properties located in the territory, and whether the trademarks claimed by Lecouturier and registered in foreign lands are an accessory of the commercial holdings of Fourvoirie, coming under this heading by the liquidation ordered by the decision of March 31, 1903, or whether they constitute a property distinct and independent of this commercial holding.

* * * * * *

"Granting the second count in appeal filed by Rey, reversing, states that the judge of the urgency proceedings was *incompetent;*

"Consequently *annuls* the decision of February fifteenth, nineteen hundred and five;

"Orders withdrawal of the fine;

"Condemns Lecouturier in his capacity to all the costs of the first instance and the appeal." [Italics ours.]

After the decision of Dec. 12, 1905, the Liquidator had in his favor only the decision of the Court of Appeals of Grenoble of July 19, 1905 (No. 4 above). Lecouturier, professing doubt as to the exact meaning of this last-named decision with reference to the foreign marks, then addressed to the Court of Appeals of Grenoble a request to *interpret* its decision of July 19, 1905, and (p. 733, fol. 2865)

> "to state and declare, by way of interpreting its decree of July 19, 1905, that the assets of the liquidation of the Chartreux comprises, not only the trade-marks filed in France by the different representatives of the congregation, but also the trade-marks filed in the different countries of the world, where the formalities have been complied with for this purpose."

On this request for interpretation there was rendered—

7. *Judgment of the Court of Appeals of Grenoble of March 27, 1906* (Complainants' Exhibit 23, R., p. 732).

This judgment first recites the requests by counsel for each party and then quotes (p. 735) the enacting part of the judg-

ment of the Civil Court of April 23, 1904 (which was affirmed by the Court of Appeals on July 19, 1905), and then follows the decree (p. 737).

The following is taken from this decree (p. 739), and it shows *precisely* what the situation is to-day in France, the Court saying that it had "decided in a non-equivocal manner" the former litigation, and that it required no interpretation, and then says (fol. 2890):

> "The claim of the receiver to the property of the trade-marks registered IN THE FOREIGN COUNTRIES, raises the question whether the law of July first, nineteen hundred and one, which is a *law of exception and police*, controls or not, beyond the territory of the Republic, the properties of the dissolved Congregations, and whether the trade-marks registered in foreign lands are an accessory of the commercial holding of Fourvoirie, thus coming under this title into the liquidation, or whether they constitute a distinct and independent property from this commercial holding:
>
> "*The question has not been debated between the parties*, and the court would not have failed, if it had been submitted to it, to treat upon it in the counts of its decision, in order to solve it in its disposition;
>
> "The silence in this respect, exclusive of any debate on this point, does not allow of admitting as being implicitly contained in the decree, in an ambiguous or equivocal form, the decision of which Lecouturier claims the benefit, and *as the interpretation which he solicits from the court would have as effect to extend beyond what was its sole object, the matter judged by the decree of July nineteenth last;*
>
> "Such an application must be rejected as not receivable, and it is left to Lecouturier to have recourse to such means as may be deemed proper;" (our italics).

This Court plainly states that to Lecouturier had been attributed by former judgments the French business at Fourvoirie and the French marks, but *not the foreign marks*, and declares that the question of foreign marks had not even been

before it for decision, that it "has not been debated between the parties" before the Court.

For a more detailed discussion of this and the preceding judgment, see Opinion of Glasson and Weiss, R., p. 774 *et seq.*

8. *Decisions of the Court of Cassation of July 31, 1906* (Defendant's Exhibit No. 21 and No. 22, Record, pp. 1409-12). These decisions were rendered by the Court of last resort in France on appeal by Rey and L. Garnier from the judgment of the Court of Appeals of Grenoble of July 19, 1905, which latter judgment was an affirmance pure and simple of the judgment of the Civil Court of April 23, 1904.

The Court of Cassation simply affirms the judgment appealed from, it "dismisses the appeal and orders the plaintiff to pay costs" (p. 1410).

9. *Decision of the Court of Cassation of Nov. 16, 1908.* This decision was rendered on an appeal taken by Lecouturier from the decision by Court of Appeals of Grenoble under date of March 27, 1906 (No. 7, above). The Court said:

> "WHEREAS, if, in the instance which has terminated in the judgment of the Tribunal of Grenoble of April twenty third, One thousand nine hundred and four, Lecouturier, in claiming the proprietorship of the business exploited by the Chartreux with all its accessories, comprising the trade-marks, asked to be recognized as the proprietor of the marks filed in foreign lands, no part of the motives nor of the purview of the judgment passed on this latter part of his conclusions;
>
> "WHEREAS before the Court, Lecouturier did not renew his original application;
>
> "WHEREAS he limited himself to conclude from the confirmation of the judgment which the Court pronounced July nineteen, One thousand nine hundred and five, and whereas, in its interpretative decree of March twenty seventh, One thousand nine hundred and six, the Court declared that the question of the proprietorship of the marks filed abroad—which question at the same time raised that of the effects which the law of July first, One thousand nine hundred and one, could produce outside of French territory—had not been argued before it;

"WHEREAS this declaration, relative to the interpretation of the decree of One thousand nine hundred and five is sovereign, and whereas, on the other hand, there is no ground for saying that, in deciding as it did, the Court of Grenoble restricted or modified what it had previously decided;

"For these reasons—

"Receives the intervention in due form;

"Joins the said intervention to the appeal, and rendering justice on the whole

"Rejects the appeal, as also the request of intervention, and condemns the appellant to the costs."

This decision was rendered long after the proofs in the present case were closed, therefore it is not in evidence. The above quoted portion is taken from a sworn copy of a translation of a duly certified and legalized (by the U. S. Consul) copy of the decision. The original copy and translation will be produced here in Court, if so desired.

In conclusion, *the highest court in France has held that the question of title to the foreign trade marks has never been before the courts of France.*

Therefore, at the present day, there does not exist in Lecouturier or his assignees any color of right given by any court in France, the Court of Cassation included, to claim or in any manner deal with the marks of the Order of the Carthusian Monks which have been registered in countries foreign to France.

10. *Judgment of the Civil Tribunal of Grenoble of May 18, 1905* (Complainants' Exhibit S, R., p. 701).

This is an action between La Union Agricola, a Spanish corporation, and Lecouturier, receiver (liquidator) of the properties of the Congregation of the Chartreux, and certain merchants.

The decision first recites certain facts showing how the action arose. The recitals are:

(a) The attempted assignment of the business in France to one Rey, former Procureur of the Order.

(b) That the said business and trade marks had already

been adjudged to be "in reality the property of the Congregation of the Chartreux."

(c) That, as a provisional measure of urgency, the receiver, Lecouturier, had been authorized by the Court at Grenoble to take effective possession of the business "without prejudice to his capacity as administrator-sequestrator of the Congregation of the Chartreux" (p. 703).

(d) On removal to Spain, the Monks, acting through Père Baglin, Superior-General of the Order, established the fabrication of their liqueurs, and entered into an agreement with said Spanish corporation, La Union Agricola, to sell said products to said corporation for a period of twelve years. Said corporation sold some of said products under a new label bearing the indication "Liqueur fabriquée à Tarragone par les Pères Chartreux",—the words "PÈRES CHARTREUX" being the essential and prominent ones. (This is the same as "Defendant's Exhibit Complainant's New Label" in the present case, Tr., p. 1297). Certain of these bottles were seized in the hands of Brezun and other merchants, named as defendants, at the suit of said Lecouturier (receiver or liquidator) on the ground that the new label infringed ("counterfeited") the old trademarks whereof said receiver was granted possession *in France* (pp. 704–8).

(e) The Court then states and disposes of certain formal objections raised by the defendants (pp. 708–710); and then comes to the question whether the new label is a counterfeit of the old Grézier labels (pp. 710–711).

The judgment proper begins on p. 711, with the title "As to the Counterfeit and Fraudulent Imitation". The Court decided under this heading (pp. 711–717) that the new label of the Monks was not an imitation or counterfeit of the old. Another important matter here is the finding of fact that the formulæ and processes of fabrication still remain the exclusive and secret possession of the Monks (pp. 711–712):—

> "Whereas in the present suit, Lecouturier, receiver of the properties of the Congregation of the Chartreux, is indeed in possession of the mark of the Grande Chartreuse, but the products which he is having made at Fourvoirie and which he sells to the public under this mark, *are not those which the Chartreux Fathers*

have made according to their process of manufacture and have sold up to the time of their expulsion from the Convent of the Grande Chartreuse ; as by application of the law of July 1st, the mark of the Grande Chartreuse may indeed have remained in the hands of the receiver of the dissolved and expelled Congregation, however *the secrets or processes of manufacture have been carried away by the Chartreux*, as an unseizable property, since processes not patented remain unknown, and the mark was thus separated from the product of which it had up to that time guaranteed the production. (Italics ours.)

" Whereas, this particular situation resulting from the new legislation brings into presence, on the one hand, the receiver who sells under the old mark of the Grande-Chartreuse a product which is not made by the Chartreux, and, on the other hand, the Chartreux in whom Lecouturier recognizes the right to manufacture cordials according to their processes, but to whom he wishes to forbid the use of their name to characterize and distinguish the products manufactured by them."

Counsel for defendant has challenged part of our translation of this Judgment, so, for convenience of the Court, we here print defendant's translation as found on page 1443 of the Record, fol. 1823 :

" Whereas, by application of the law of the 1st of July, the mark of the Grande Chartreuse may have remained in the hands of the Liquidator of the dissolved and expelled Congregation, but the secrets or processes of manufacture have been carried away by the Chartreux as a property unseizable, as long as the non-patented processes remain unknown, and the mark thus found itself separated from the product, the origin of which it had theretofore guaranteed."

As this decision has an important bearing on the rights of the litigation in the United States (especial reference being had here to the " contempt proceedings " brought into this Court by petition for supplemental writ of *certiorari* presented Jan. 3, 1910), this Court's attention is respectfully called to

that portion of the decision found on pp. 718–721 of the Record, under the heading "As to the Usurpation of Name". It is here noted that the words "Chartreux Fathers", wherever they appear in the decision, should be read "Pères Chartreux", the latter being the phrase used in the original.

On page 718 of the Record is a statement by the Court of the principles of the French Law of July 28, 1824, with reference to the "liberty of industry", etc., and then follows:

> "Whereas the trade-mark filed by the Union Agricola indicates Tarragone as the place of manufacture and the Chartreux Fathers [Pères Chartreux] as the manufacturers; as it announces that the cordial is manufactured by the Chartreux Fathers [Pères Chartreux] in the distillery of the Union Agricola, a stock company at Tarragone; as these indications correspond to an existing situation and inform the consumer exactly of the place of manufacture and the name of the manufacturers; as the law of 1824, which punishes only falsehood, cannot govern a trade-mark in which all the statements agree with the truth;
>
> "Whereas Lecouturier in order to take advantage of the law of 1824, contends that the Union Agricola cannot avail itself of the words "Chartreux Fathers" ["Pères Chartreux"], because he alone can make use of them to designate the Chartreux as manufacturers, and that this exclusive right belongs to him, by virtue the law of July 1, 1901, as administrator-sequestrator of the properties of the Congregation of the Chartreux;
>
> "Whereas the words 'Chartreux Fathers' ["Pères Chartreux"] constitute a name which belongs to the Order of the Chartreux, both in its collectivity and to the Monks which form part of that Order so long as they remain attached thereto, faithful to the statutes which are the rule of the Congregation; as the property of this name, as manufacturers, has been recognized in the Chartreux by numerous decisions of justice, which have decided it in their favor, by virtue of article 1 of the law of July 28, 1824; as after their expulsion, if the law of July 1, 1901, which dissolved the Congrega-

tions, dispersed persons and properties, has placed under sequestration the properties held by the Congregation, the Chartreux Fathers [Pères Chartreux] have none the less preserved their name, as much as an order of Monks, a name that they keep in their new residence."

* * * * * * *

"Whereas this principle has been respected, either when a trade-mark has been the object of an expropriation for public purposes, and that the proprietor of the mark has wished, after the expropriation, to continue the commerce and avail himself of his name, or, when a mark has been seized by a creditor from his debtor, and the latter has created another business under his patronymic name (Pouillet, Nos. 91 and 601), or even when the proprietor of a mark composed of his name has sold his business with his mark and has filed a new mark in which he has indicated his patronymic name; as in this last hypothesis of voluntary assignment, very different from the present case, the Court of Cassation has decided that if the acquisition of a business of which a trade-mark formed part gives to the purchaser the right to avail himself of this mark, such as it had been created by the former establishment, this right would not be absolute, and must, when one of the principal elements of the industrial mark is a proper name, be limited by the necessity of preserving to the proprietor of this name that which is inherent thereto by use without abuse (Cassation, April 20, 1896)."

* * * * * *

"But whereas Lecouturier, as administrator-sequestrator of the properties of the congregation and of the business of Abbe Rey, *has no right to the words* 'Chartreux Fathers' ['Pères Chartreux'], as this name has never formed part of the trade-mark of the Grande-Chartreuse; as the products sold to the public have been sold under the name of the Grande-Chartreuse, which was the trade name of the establishment, as was recognized in the judgment of April 23, 1904, which the receiver relies on; as the commercial name was that of

Garnier, as is held in the same judgment which grants to Lecouturier the exclusive right to the industrial and commercial use of the name of L. Garnier; as the Chartreux who were the manufacturers of the products of the Grande-Chartreuse have never distinguished their products by the name of 'Chartreux,' have never given this name to their commercial establishment, neither on the labels, nor on invoices, nor in correspondence, and, [where]as, if the law of July 1, 1901, has had for effect to dispossess them of their business and of its accessories, *it has not been able to take from them their name which was never a dependency of the said business;*

"Whereas the Chartreux who have preserved the right to manufacture cordials by their particular processes of manufacture have also the right to advertise their products to the public or *to distinguish them by their name as manufacturers* 'Chartreux Fathers' ['Pères Chartreux'] *which has remained their property;* as hence Lecouturier is wrong in charging the Union Agricola and the Chartreux with a usurpation of name;" (Italics ours).

Under the title "As to Unfair or Illicit Competition", the Court discusses certain complaints, made by Lecouturier, which are not pertinent for present purposes. The Court held that it had no jurisdiction of this part of the complaint (pp. 721–723).

The decision concludes by holding that the Union Agricola had committed neither counterfeit nor fraudulent imitation, annuls certain seizures, and holds that it has the right to employ on its labels the name "Pères Chartreux", and condemns Lecouturier to pay with interest the sum of eighteen hundred francs as damages to the Union Agricola, and smaller sums to the merchants, and condemns him further to the expenses of all the parties (p. 724). All the questions presented (except that of unfair competition, on which no judgment was given) were decided *adversely* to the liquidator.

11. *Decision of August 14, 1909, by the Tribunal of Commerce of the Seine.* This decision is not in evidence, as it was rendered long after the proofs in the present litigation were

closed. The following quotations are taken from a translation (made by a competent person) of a certified copy, duly legalized by the United States Consul at Paris.

Suit was brought by the Compagnie Fermiere (Lecouturier's assignee) against La Union Agricola in an endeavor to have re-considered the decision by the Tribunal of Grenoble of May 18, 1905, and to have it determined that La Union Agricola could not sell its products while declaring that they were those which had formerly been manufactured as La Grande Chartreuse.

The decision states:

> "Whereas it is proper at first to observe that the judgment of May 18, 1905, *has passed in force as a thing judged;* the Civil Tribunal of Grenoble passing on a suit between Lecouturier, as liquidator and sequestrating-administrator of the goods of the dissolved Congregation of the Chartreux, and the Union Agricola, concerning facts of counterfeiting and unfair competition imputed by Lecouturier in his representative capacity to the Union Agricola, has established their respective rights in connection with the nature and the denomination of the liqueurs that they manufacture and has expressly announced in its motives that— "

Here follows quotations from the judgment of May 18, 1905, and then the decision continues:

> "*Whereas the Fermiere Company of the Grande Chartreuse, that acquired the business by the adjudication in question, is subrogated to Lecouturier in his representative capacity and cannot have more rights than the latter.*
>
> "Whereas the demand of the said Company [Fermiere] tends, under another form, to bring up for reconsideration the decision from which literal citation of the principal motives and dispositions precedes.
>
> "*Whereas this is an adjudicated matter and therefore on this point his application is not receivable.*" (Italics ours.)

The judgment adds that even under this new procedure, the application of the Compagnie Fermiere is not well founded, and continues:

> " Whereas in effect, continues this judgment that from the examination of the book of charges of the adjudication cited above, it results that the Fermiere Company of the Grande Chartreuse has acquired only the name, the marks and the business of the Chartreux, *but not their process of fabrication.*
>
> " *That it does not justify* [*the Fermiere Company*], *even to allege that this secret or process of fabrication is actually in its possession and that the Pères Chartreux have been disseized of it in its favor.*
>
> " Whereas it is of evidence since then that the Pères Chartreux who, as is determined by the judgment of the Civil Tribunal of Grenoble above referred to, *have carried with them their secret or process of fabrication, can fabricate and do fabricate their liqueur at Tarragone with the same formulas and in the same manner that they manufactured it at the Grande Chartreuse.*
>
> " That it cannot be said therefore that they do wrong in announcing to the public that they make the same liqueur as that which they fabricated at the Grande Chartreuse, since one part of the cited judgment recognizes that they can fabricate their liqueur with their processes and under the name of ' *Pères Chartreux* ', and that from another part *the secret or process of fabrication of the said liqueur has not been acquired from them nor taken away and has never been conceded nor divulged by them.*" (Italics ours.)

It has therefore been formally and expressly decided by the judgment of May 18, 1905, as well as by the judgment of Aug. 14, 1909, by the Courts of France, that neither Lecouturier nor the Compagnie Fermiere has any right to or use of the name " Pères Chartreux " and that this name has *remained* the property of the Order and that it never formed a part of the trade marks of the Grande Chartreuse. Attention is called to the fact that the judgment of the Tribunal of Commerce determines anew that the Monks have a secret of fabric-

ation, which secret they have carried away with them, and that the Compagnie Fermiere is not justified even to *allege* to be in possession of this secret; furthermore, that the Monks can and do *now* manufacture their product "with the same formulas and in the same manner" as heretofore;—and the French Courts have declared the right of the Monks to announce these facts in France and thereby make sales of their goods.

Summing up as to the Judgments of the French Courts.

The legal aspects of this case may be briefly presented: The question before the Court is the right to use, in the United States, certain trade-marks, trade-names, distinctive bottles, labels, etc., representing the good-will, etc., *in the United States* of the Chartreuse liqueur business.

In the beginning the rights in question were certainly vested in the complainants; that is, for generations and up to a few years ago, it is agreed by all parties that the Monks exclusively held these rights.

The defendant is now seeking to avail itself of these rights; and, *but for its claim of having acquired the right to use them*, it would be in fault in all respects, and complainants would be entitled to a decree in every respect asked for.

Complainants having originally held the rights in question, in the absence of proof to the contrary, it will be presumed that these rights remain vested in complainants (1 Greenleaf on Evidence, 15th Ed., Sec. 41, p. 62; Sec. 42, p. 65; Chase's Steven's Digest of Evidence, 2nd Am. Ed., p. 261, note 3). That is to say, the burden is on defendant to show that it has lawfully succeeded to the rights of complainants in the United States.

Defendant asserts that these rights have been vested in defendant by virtue of decisions of French tribunals. But for this alleged claim of ownership, defendant would be without the color of a standing in Court.

The pertinent decision of the *French* Courts regarding these United States rights, here in question, is the decision of the Court of Appeals of Grenoble rendered March 27, 1906 (R., p. 732), affirmed by decision

of the Court of Cassation, rendered Nov. 16, 1908, holding that the French Courts have never been called on to decide, and have never decided any controversy as to the rights in the United States or other foreign country.

In other words, the defendant cites the adjudications of the French Courts as its defense against our bill, and the French Courts expressly deny that they have granted the rights which defendant relies on. This leaves defendant without color of right to sell its products as " Chartreuse " and under the labels designed by the Monks, registered by them, and bearing their ecclesiastical symbols and the fac-simile signature of their former Procureur, L. Garnier.

APPENDIX E.

Review of Judgments Rendered in Foreign Countries Other than France.

Buenos Aires Judgment of December 23, 1905 (Complainants' Exhibit 26, p. 803, R.). On the assumption that the French law of July 1, 1901, and the Judgments construed to be rendered in his favor in France, would receive favorable recognition in the Argentine Republic, the Liquidator there brought an action to have transferred to his name, as Liquidator, two trade marks theretofore registered in the Argentine Republic by Father Rey on behalf of the Monks. The Buenos Aires Tribunal held that the French law of July 1, 1901, was inapplicable in the Argentine Republic, and that the judgment Lecouturier sought to have executed was therefore contrary to the principles and to the purposes of that country, " because it aspires to deprive the holder of the rights legitimately acquired in conformity with the laws of the Nation, such as that on trade marks, commerce, and agriculture " (bottom of page 807, R.), and the Court held " that there is no cause for the execution of the judgments presented nor consequently for the transference of the marks ", and condemned Lecouturier to pay the costs.

Judgments were also rendered in favor of the Monks and

against Lecouturier, or his representatives, in two later actions brought in the Argentine Republic, but they are not here in evidence.

Judgment of Federal Courts of Rio de Janeiro of May 9, 1907 (Complainant's Exhibit, R., p. 828). This was an action entitled Rey vs. Lecouturier. It appears that, on behalf of his Order, Rey registered in Brazil certain trade-marks "designed to distinguish the cordials known by the name of 'Chartreuse', the recipes for which belong to the Carthusian Monks". The Liquidator registered some of these same marks in the International Bureau at Berne and subsequently registered them in Rio de Janerio, taking the French law of 1901 as his authority. Thereupon this action was brought for the annulment of the said registration by the Liquidator.

The principal and most interesting paragraph of this judgment is as follows (pp. 831-2):

> "Whereas the French law of July 1, 1901, a law of police and security, *is only established for French territory, for persons and property there situated*, and if it were not so, would clash with the rights of territorial sovereignty, and be against our constitution, which guarantees the right of ownership in all its fullness, and only admits expropriation for public necessity or utility, by previous indemnification (art. 72, paragraph 17), and which has established the regime of full religious freedom, worship and association." (Italics ours.)

The judgment concludes by upholding the right of complainant and annulling the registration by defendant of the marks in Brazil.

Decree of the Swiss Federal Tribunal, Penal Court of Cassation, of Feb. 13, 1906 (Complainants' Exhibit 27, p. 809, R.). This decision was rendered on appeal in a criminal action brought by Rey (the registered proprietor of the Marks in Switzerland, on behalf of the Monks) and his attorney, against certain Swiss merchants, for selling as genuine "Chartreuse" the liqueur manufactured by the French liquidator. The lower court rendered a decision of non-suit, appeal was taken and the Court of Cassation declared the decree of non-suit void and sent the case back. On the second trial the prisoners

were acquitted. Appeal was again taken to the Court of Cassation which resulted in the suspension of the judgment of the lower Court freeing the prisoners, and an injunction issued against the sale or disposal of the infringing goods seized during the first action. The Court of Cassation held, in principle, that the putting in circulation in Switzerland of bottles of "Chartreuse" under marks that constituted an imitation of the mark filed by Rey (on behalf of the Order) is punishable, even though the affixing of the mark to the bottles had been affected in France by the liquidator.

With reference to the rights of the liquidator to property outside of France, the decision states (Record, p. 819).

> "Now the rights to the marks, acquired in foreign lands, could not be included in the state of liquidation in France, even if these rights, prior to the liquidation, had belonged exclusively to the Congregation. The liquidation, begun in France conformably to law, did extend, in view of the purpose of this legal operation and the nature of things, *only to the property of the Congregation* located in France. The dissolution of the Congregation as a corporation, as also the liquidation of its holdings, does not generally affect its commercial capacity, nor the properties of the Congregation; it was only a question of the expatriation of the latter and to cause the disappearance from the French territory of the mainmorts; it was for this purpose and to this end that the liquidation was to serve." (Italics ours.)

The decision continues that execution in Switzerland of the decrees of the French Courts must be refused "for the reason that the laws of public right or the interests of public order in Switzerland are opposed to such a decision of a foreign jurisdiction receiving its execution in this country."

The Court of Geneva by its decision of June 19, 1909, rejected an application made by Lecouturier with a view to rendering executory in Switzerland certain decisions he had obtained in France. The decision states 'that the French law of July 1, 1901, constituted an exceptional measure of police and surety,' and as such 'has been expressly recognized by the French tribunals themselves.' The object of the Swiss law, as

stated, is 'to protect the interest of third parties and of the public, to whom the mark must be a guaranty of the authenticity and of the identity of the product, and who, consequently, have the right to require that the merchandise that is sold them under a mark that they know, remain always the same.' And the Court added that 'though it is certain that if the Fermiere Co. has entered into possession of the premises of the distillery of Fourvoirie, *they have never arrived at making the liqueur which has given the reputation to the marks.*' The Court denied the application for exequator in Switzerland of the French decisions.

On June 26, 1909, the Court of Geneva rendered a second decision in a suit brought against Lecouturier and the Fermiere Company for counterfeiting and also to strike out marks that had been filed by Lecouturier in Switzerland. The Court decided that Lecouturier, not being the assignee of the business of the Monks, in the sense of the Swiss law, had no right to the possession of the Swiss marks. Lecouturier argued the marks bore the words "Liqueur Fabriquée à la Gde. Chartreuse," and that this statement was not true for the reason that the Monks no longer manufactured at the Grande Chartreuse but at Tarragone, Spain; the Court decided that in this case the statement on the marks of the Monks was not a false indication of origin, for the reason that *the label was attached to the personality of the manufacturers*, rather than to the place of manufacture, and that it mattered little whether it was manufactured here or there, provided it was made according to the processes employed by the Monks. The Court decided the ownership of the Swiss marks was vested in Rey (for the benefit of the Order) and directed the striking out of all marks filed by Lecouturier and the Fermiere Company.

Judgment of Civil Tribunal of Hamburg of Fed. 23, 1906 (Defendant's Exhibit 25, R., p. 1459). This is an action entitled between Lecouturier and Rey. The decision was made upon an application by the defendant to reform an interlocutory order of May 4, 1905, prohibiting Rey from disposing of the trade marks registered in the Imperial Patent Office in the name of Rey, but for and on behalf of the Monks, said marks relating to the products of the Grande Chartreuse, on the ground that the marks were in reality the property of the liquidator.

this recipe into Spain, and as they have there continued their exploitation at Tarragone, it is true in other locations and with other utensils, in particular also with other auxiliary means, but in particular also with several old workers who exiled themselves with them, the business, as has been very seasonably set forth in the decision of the Court of Appeals of Hamburg, did not remain in France but was transferred to Spain where Mon. Albert Rey has also transferred his domicile (as appears from the Register of Marks) and who in his capacity of curator is in possession of the marks in question."

Judgment of the Civil Tribunal of Tunis of May 11, 1907 (Defendant's Exhibit, R., p. 1494).

This was an action brought by Rey against Lecouturier for the cancellation of registration by the liquidator of the old Chartreuse trade marks. It appears that Rey died before the trial, and his son Albert Rey continued the prosecution. The judgment asserts that on June 30, 1906, the Compagnie Fermiere de la Grande Chartreuse, as the assignee of the liquidator, acquired the business and marks exploited at the Grande Chartreuse and at Fourvoirie ; in other words, Lecouturier put up the business in his hands as liquidator at public auction and the Compagnie Fermiere, being the highest bidder, acquired the title.

The judgment recites (p. 1500) that whereas the Civil Tribunal of Grenoble had decided that the right of ownership of the marks did not in reality belong to Marius Celestin Rey (the original complainant in this action), it necessarily followed that his son, Albert Rey, had no right to the subject-matter of the action.

The judgment continues (p. 1500) :

" Whereas the decision aforesaid has in France the force of *res judicata*, and the French Courts in Tunisia—country placed under the French protectorate—which exercises jurisdiction there in the name of the sovereignty of the French people, cannot be considered as foreign tribunals in so far as concerns a judgment rendered by a Court sitting in the continental territory of the

> Republic ; that such decision when it became definitive, should therefore be considered as having all the value of *res judicata* for these Courts."

The Court concludes by dismissing the suit on the ground that the plaintiff had no right to bring it, and declares that the Compagnie Fermiere alone has the right to use the trade marks in Tunis.

This judgment was rendered by a Court of First Instance in a country "under the French protectorate," by French Judges named by the French Government and whose tenure of office can be revoked at will by the French Government. Under these circumstances, the Court could not have very well rendered any other judgment.

Appeal was taken by Rey to the Court of Appeals of Algiers. Decision was handed down on Feb. 1, 190[illegible], holding Rey to be without right as the party complainant, but evading to pass on the merits of the question, which was to determine the ownership of the marks in Tunis.

It was this first Tunis judgment whereof the Lord Chief Justice of England said :

> "It is perfectly obvious that the Tunis Judgment may have proceeded on different lines, and certainly having heard it read it does not commend itself to my mind as an authority which we ought to follow in preference to the Judgment [by Judge HOUGH at Circuit] in the United States."

Belgium, Holland, Spain, and Portugal. Decisions favorable to the Monks have also been obtained in these countries ; but as the decisions were not rendered until after the proofs in the present case were closed, they are not in evidence.

…preme Court of the United…

No. [illegible]

October Term, 1910.

…RE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all of the other Members of said Order,
Petitioners and Cross-Respondents,
(Complainants in Circuit Court),

vs.

THE CUSENIER COMPANY,
Respondent and Cross-Petitioner,
(Defendant in Circuit Court).

On Writ and … of Certiorari … United … Court of … the Second …

…EPLY BRIEF FOR PÈRE BAGLIN, &C., ON THE QUESTION OF JURISDICTION.

PHILIP MAURO,
C. A. L. MASSIE,
RALPH L. SCOTT,
Counsel for Père Baglin…

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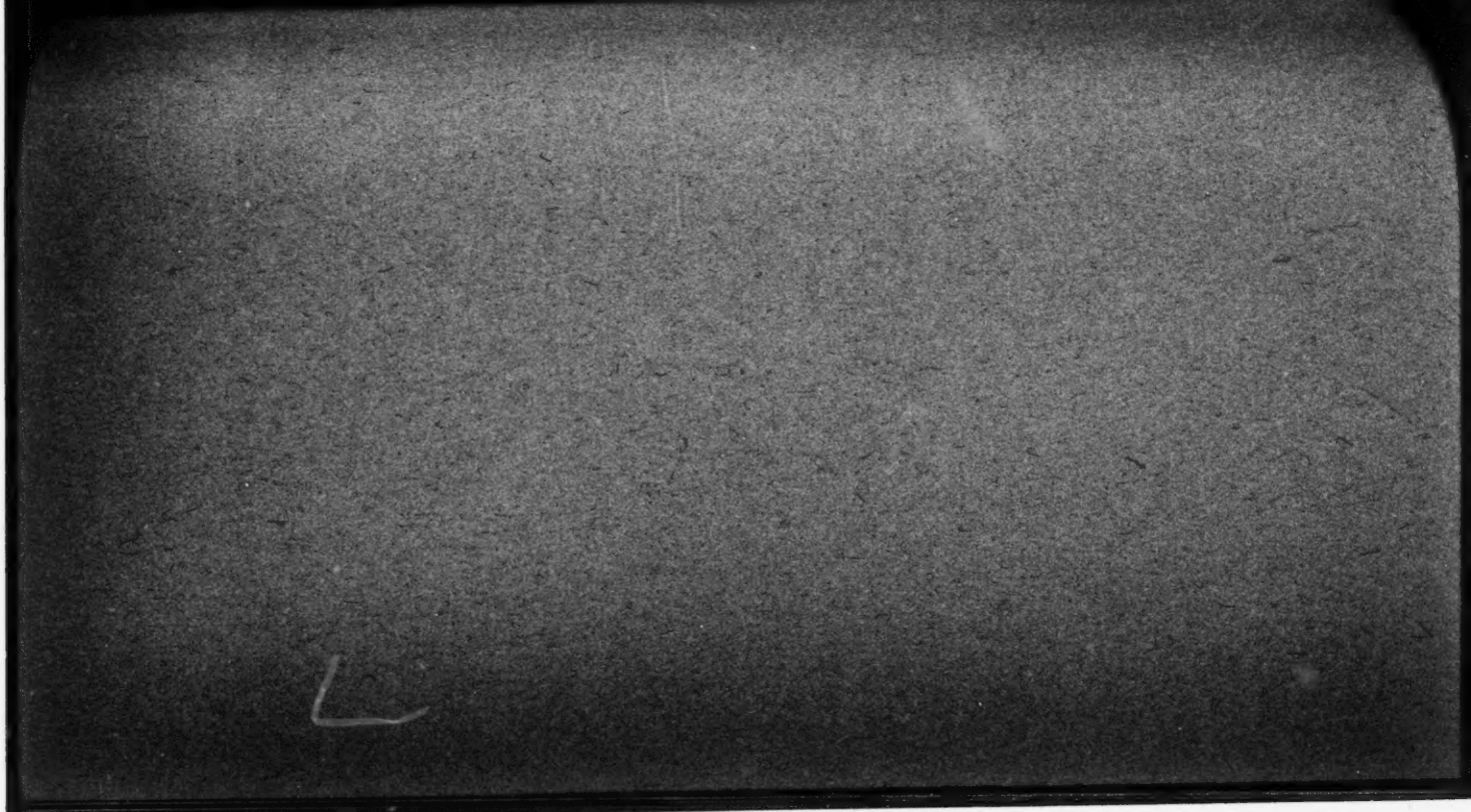

Supreme Court of the United States,

NO. 99.—OCTOBER TERM, 1910.

PÈRE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all of the other members of said Order,
Petitioners and Cross-Respondents
(Complainants in Circuit Court),

vs.

THE CUSENIER COMPANY,
Respondent and Cross-Petitioner
(Defendant in Circuit Court).

On Writ and Cross-Writ of *Certiorari* to the United States Circuit Court of Appeals for the Second Circuit.

REPLY BRIEF FOR PÈRE BAGLIN, &c., ON THE QUESTION OF JURISDICTION.

The jurisdiction of this Court (and of the Court of Appeals) is questioned in the brief of respondents. Such question was not raised in the Courts below nor in previous proceedings herein. *Per contra* respondent invoked successively the jurisdiction of the Court of Appeals and of this Court, in its appeal to the former Court and in its cross-petition to this Court.

Respondent's arguments involve two distinct questions: First, as to the *power* or *right* of this Court to grant the writ

of *certiorari;* and, second, as to the *wisdom* or *propriety* of exercising that right in the present case.

McClellan vs. Carland (217 U. S., 268), conclusively answers the first question, holding that this Court *has* ample power to grant the writ. And the action already taken herein by this Court, in granting (as it has done) the writ and cross-writ, is sufficient warrant of the propriety of exercising the right in the present instance; and, under the principle set out at the bottom of page 26 and top of page 27 of respondent's brief, this Court's decision that the writs should be granted, "settles the law in respect thereto for further action in the case." Hence the propriety of issuing said writ in the present case is not now open to discussion.

The objection now raised to the jurisdiction of the Court is without merit. That objection is based on an erroneous assumption, and is supported by unsound reasoning, and by misapplication of decisions of this Court.

I.

The erroneous assumption is stated in large type at head of page 25 of respondent's brief, as follows:

> "Jurisdiction can be based solely in this case upon alleged difference of citizenship."

The Bill of Complaint, however, alleges the ownership by complainants of Trade-marks duly registered in the United States and used by complainants for many years in commerce between the United States and a foreign country (paragraph V., Tr., p. 4); and further alleges infringement of said Trade-marks by defendant by the importation into the United States of certain bottles of an imitation "Chartreuse" (par. VII., p. 5).

The Bill, therefore, states a case arising under the Trade-mark laws of the United States, and hence the Federal Courts have jurisdiction irrespective of adverse citizenship.

But the jurisdiction of the United States Courts can also be maintained on the ground of diverse citizenship, as will be shown hereafter.

II.

Respondent argues (p. 4) that this Court, by granting the petition for writ of *certiorari*, in effect dismissed our appeal. It says: "The effect of the granting of the writ of *certiorari* was by implication to dismiss the appeal." From this unwarranted inference, it draws the conclusion (a *non sequitur*) that, having thus by implication dismissed our appeal, this Court must be presumed to have decided that the present case is not a case arising under the Trade-mark laws.

To this we reply (*a*) The granting of the writ does *not* in effect amount to a dismissal of our appeal. The cases cited on page 4 lend no support whatever to this contention. This Court did not have before it simultaneously our Appeal and our Petition for writ of *certiorari*. Hence the grant of the latter does not imply any action upon the merits of the former. *Per contra*, it was the DEFENDANT who simultaneously presented its cross-petition for *certiorari* and its motion to dismiss our appeal. The Court, by granting the former and taking no action upon the latter, in effect overruled the motion to dismiss, on the principle of the decisions cited by Respondent's Brief (p. 4); and our appeal remains undismissed.

(*b*) There is nothing in the proceedings from which it can be inferred that this Court so much as considered, much less that it passed upon, the question whether or not the Bill states a case arising under the Trade-mark laws of the United States.

This Court sometimes issues its writ of *certiorari* in cases where there is a probable right of appeal, which nevertheless might be open to dispute. That was the express reason why the issuance of that writ was prayed in the present case (*Hurst vs. Hollingsworth*, 94 U. S., 111; *Security Trust Co. vs. Dent*, 187 U. S., 237, 239).

III.

On page 25 respondent says that Section 18 of the Trade-mark Law of 1905, which gives this Court power to issue the writ of *certiorari* in cases arising under that Act cannot be invoked here, because there is no allegation that complainants' trade-marks were registered under that Act. This assumes that the power of the Court to issue such writs is derived solely from that Act. Its power is not derived from, and does not depend upon, *that* Act.

In *A. Leschen & Sons Rope Co. vs. Broderick Co., 201 U. S., 166*, this Court entertained jurisdiction, on appeal, of a suit between citizens of the same State, based on a trade-mark registered under the prior Act of 1881 (as was our "Chartreuse" trade-mark).

The decision in the Leschen Rope Case was rendered March 19, 1906—subsequent to the passage of said Act—and it shows that this Court has jurisdiction of a trade-mark case between citizens of the same State. (Both parties were citizens of the State of Missouri).

Nor is this Court's power to issue such writs affected by the Act of 1905, all existing remedies being expressly reserved by the provisions of the Act itself (Sec. 23, Act of Feb. 20, 1905).

IV.

On page 26 respondent states that "the only provision under which a writ of *certiorari* can be granted is that in Section 6 of the Evarts Act"; and after quoting part of that section it says that therefore this Court had no power to grant the writ "unless the decree of the Circuit Court was final." This is a *non sequitur*, even if the premise were correct.

But the power to issue the writ of *certiorari* is not limited to cases mentioned in the Evarts Act.

McClellan vs. Carland, 217 U. S., 268, 277-279.

Respondent has misunderstood the language of the Act itself. The purpose of the portion quoted by it is plainly to *reserve* and *perpetuate* the right of this Court to issue the writ even in cases in which the Act makes the decisions of the Circuit Courts of Appeal final.

Furthermore one of the very decisions cited by Respondent holds that this Court can grant its writ of *certiorari at any stage of the proceedings.*

American Construction Co. vs. Jacksonville Ry., Co., 148 U. S., 372, 385.

V.

We maintain, however, that the averments and proofs are ample to sustain the jurisdiction of the Court on the ground of diverse citizenship [in addition to the unquestionable jurisdiction on the ground of this being a trade-mark case].

(a) The averment as to defendant is that it is " a New York Corporation, located at and having its principal office and place of business at No. 110 Broad street, in the Borough of Manhattan, City and State of New York " (Tr., p. 1). The words " A New York Corporation " is the usual formula that has generally taken the place of the longer form " a corporation created, organized, and existing under and by virtue of the laws of the State of New York." The meaning of the expression is not uncertain or ambiguous. The cases cited in Respondent's Brief, pages 28, 29, are not applicable. The question therein was as to whether the defendant was a *corporation.* Our Bill alleges that defendant *is* a " corporation " and that it is a *New York* corporation. This averment, not having been denied, stands as proved.

(b) As to complainants, it is conceded that the averments are not so definite as might, in some cases, be desired ; but they are ample for the purpose of showing diverse citizenship upon the authority of the decision of this Court in *United*

States Express Co. vs. Kountze Bros., 8 Wall., 342. There was, in that case, no direct averment that the suit was between citizens of different States. It was averred that defendant (in the Court below) was a corporation existing under the laws of New York, and that plaintiffs were a firm of natural persons, and had been engaged for a period of eighteen months in carrying on the banking business in Omaha. The Court sustained the jurisdiction, saying:

> "In this country, people usually live and have their citizenship in the place where they do business. Especially is this true of persons engaged in a business requiring capital, and involving risk, at a point which is remote from the great centres of trade and commerce" (8 Wall., p. 351).

In the present case there are many more details tending to show that complainants are not citizens of New York State. The Bill alleges that the "Order of Carthusian Monks, of the Convent La Grande Chartreuse, generally known as 'Peres Chartreux' (Chartreuse Fathers) has for about *nine hundred years* prior to 1901," continuously occupied a Convent located in the Republic of France (Par. I., Tr., p. 2); that said Order is a religious Order of Voluntary Association (Par. II.); that in the year 1904, in consequence of the enforcement of the Associations Act by the French Government, the said Order removed the manufacture of Chartreuse liqueurs from said Convent in France, to Tarragona in Spain.

Père Baglin, who was the Superior-General of the Order at the time this suit was begun, testifies to the location of the Order in France for about 800 years (Tr., p. 169, Q. 9), its expulsion from France in 1903 (p. 171, Q. 27), and the re-location of its "Mother House" at Lucca, Italy (p. 169, Q. 12). He testifies that the Carthusians had other houses in England, Switzerland, Germany, Austria and Italy (p. 171, Q. 24). It is evident that, because of the peculiar facts of the case it would be difficult to make the allegations as to the citizenship of each individual (of the class constituting the present complainants) any more definite than we have made them. On the other hand, it is also evident that the averments and

proofs are ample—unchallenged as they are—to establish diverse citizenship from that of a New York Corporation.

Respectfully submitted,

PHILIP MAURO,
C. A. L. MASSIE,
RALPH L. SCOTT,
Counsel for Père Baglin, &c.

Dated New York City, March, 1911.

IN THE 1

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all other Members of said Order, Complainant Appellant,

AGAINST

CUSENIER COMPANY, Respondent.

No. 614. October Term, 1908.

2

And now comes the Cusenier Company, the respondent above named, by A. L. Pincoffs and Roger Foster, its counsel, and moves to dismiss, with costs, the appeal taken herein by the above-named Pere Alfredo Luis Baglin, Superior-General of the Order of Carthusian Monks, for Himself and all other Members of said Order, upon the ground that this Court has no jurisdiction of the same, and because the said appeal is otherwise informal, irregular and insufficient, for the reason that the decree which the said appeal seeks to bring up for review is not a final decree, and for other reasons apparent upon the face of said papers.

3

4 IN THE

SUPREME COURT OF THE UNITED STATES.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all other Members of said Order, Complainant Appellant, AGAINST 5 CUSENIER COMPANY, Respondent.	No. 614. October Term, 1908.

SIR:

Please take notice that upon the affidavit of Jules Aubry, hereto annexed, sworn to on the 27th day of February, 1909, and upon the copy of the bill in equity in the Circuit Court of the United States for the Southern District of New York, in the suit above entitled, and the decree of said Court upon said bill in equity, and upon the order and mandate of the Circuit Court of Appeals for the Second Cir-
6 cuit, upon the appeal from said decree, and the order thereupon of said Circuit Court, copies of which are hereto annexed, and upon all the papers and proceedings herein, and upon the printed brief, a copy of which is herewith served upon you, we shall on Monday, the 29th day of March, 1909, and if motions are not then heard, at the next succeeding motion day of this Court, make and submit to the Supreme Court of the United States, at a stated term thereof, to be held in the Capitol, in the City of Washington, District of Columbia, the motion, a copy of which is hereto annexed; and that we shall also then and there move said Court for an

order dismissing the appeal herein for want of jurisdiction, and because the same is otherwise irregular, informal and insufficient, for the reason that the decree which the said appeal seeks to bring up for review is not a final decree, and for other reasons which are apparent upon the face of said papers, and that we shall then and there move for such other and further relief in the premises as may be just. 7

New York, February 27th, 1909.

Yours, &c.,

A. L. PINCOFFS,
ROGER FOSTER,
Of Counsel for Cusenier Company, Respondent.

To PHILIP MAURO, Esq., 8
Of Counsel for Complainant Appellant,
154 Nassau street,
New York.

IN THE

SUPREME COURT OF THE UNITED STATES.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all other Members of said Order, Complainant Appellant, AGAINST CUSENIER COMPANY, Respondent.	No. 614. October Term, 1908. (No. 21,410.) 9

UNITED STATES OF AMERICA,
Southern District of New York,
State of New York, } ss.:

JULES AUBRY, being duly sworn, deposes and says: I reside in the City, County and State of New York.

10 I am the Vice president of the Cusenier Company, which is the respondent above named.

On or about the 7th day of January, 1905, a bill in equity by the above-named complainant, appellant, against the Cusenier Company, was filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York. A copy of said bill in equity is hereto annexed, marked A. Said bill prays injunctive relief and an accounting as follows: "That said defendant may be com-
" pelled to account for all the profits, gains, savings
" and advantages derived or received by it by reason
" of the unlawful acts herein complained of." An appearance and answer traversing the material
11 allegations thereof were duly filed by the said Cusenier Company to said bill. The general replication was thereafter filed by complainant. Testimony was taken by both parties in support of the issues raised by said answer and replication. On or about the 26th day of November, 1907, a decree was entered thereupon, after a hearing, a copy of which decree is hereunto annexed, marked B. Said decree enjoined the said Cusenier Company from using certain alleged trade-marks, and also from selling or offering for sale any liqueur or cordial not manufactured by complainant, in any dress or package like or simulating in any material respects the dress or package theretofore used by complain-
12 ant. Said decree concluded as follows: "5. It is
" further ADJUDGED, ORDERED and DECREED, that the
" matter be referred to John A. Shields, Esq., as
" Master, to take the usual accounting and report to
" this Court with all convenient speed the amount
" of defendant's profits by reason of the infringe-
" ments and wrongs above referred to, together
" with the quantity of the infringing article now in
" possession or control of defendant or of any of its
" officers, servants or privies. 6. And it is further
" ADJUDGED, ORDERED and DECREED, that complain-
" ants do recover from defendant their taxable costs

"herein; and that execution issue for the same and 13
"for the amounts found due on the accounting."

Subsequently thereto, the said Cusenier Company duly appealed from said decree to the Circuit Court of Appeals of the United States for the Second Circuit. Said appeal duly came on to be heard. Subsequently thereto, and on or about the 21st day of August, 1908, the said Circuit Court of Appeals, after argument on behalf of both parties thereto, duly rendered its decision modifying the injunctive part of said decree and in other respects affirming the same and affirming so much thereof as directed an accounting. The said modification consisted in inserting in said decree after the words "or any of the trade-marks above referred to or any colorable 14
imitation thereof" in the fourth paragraph of the said decree the following words: "unless so used as clearly to distinguish such liqueur or cordial from the liqueur or cordial manufactured by the complainants," and by striking out from the words in the same paragraph "from making use of any bottle or label or package," the words "bottle or," and by substituting therein for the word "package" the word "symbol," and by inserting in the same paragraph between the words "similar to" and "complainant's exhibit" the words "those appearing on." The order of said Circuit Court of Appeals therein is recited in its mandate. A mandate thereupon was duly issued from said Circuit Court 15
of Appeals on or about the 22d day of August, 1908, a copy of which mandate is hereunto annexed, marked C. A copy of the order upon said mandate, which correctly recites the decision of said Circuit Court of Appeals, is hereunto annexed, marked D. On or about October 16th, 1908, the said complainant obtained from the Honorable E. Henry Lacombe, United States Circuit Judge, an order allowing an appeal from the order for the mandate of the said Circuit Court of Appeals for the Second Circuit, made and entered on October 21st, 1908. Said appeal has been docketed and is

16 now pending on the calendar of this Court and is number 614 on the calendar for the October Term, 1908. Its file number is 4410. A citation thereunder has been served upon the Cusenier Company.

JULES AUBRY.

Sworn to before me this 27th day of February, 1909.

[NOTARIAL SEAL.] Notary Public,
New York County.

---

17 **A.**

IN THE

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PERE ALFREDO LUIS BAGLIN, Procureur of the Order of Carthusian Monks, Convent La Grande Chartreuse, for himself and all of the other members of the said order,

18

vs.

CUSENIER COMPANY.

In Equity.
" Chartreuse."

Bill of Complaint.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

Your orator, Pere Alfredo Luis Baglin, of Tarragona, Spain, Procureur of the Order of Carthusian

Monks, Convent La Grande Chartreuse, for himself and all the other members of the said order, brings this his bill of complaint against Cusenier Company, a New York corporation, located at and having its principal office and place of business at No. 110 Broad street, in the Borough of Manhattan, City and State of New York, within the Southern District of New York. 19

And thereupon your orator complains and says:

I.

That said Order of Carthusian Monks, of the Convent La Grande Chartreuse, generally known as "Peres Chartreux" (Carthusian Fathers), has for about nine hundred years prior to 1901, continuously occupied a convent at La Grande, near Voiron, in the Department of Isere, Republic of France, and for upwards of four hundred years last past has continuously carried on the manufacture of a certain liqueur or cordial known throughout the world as "Chartreuse," which said liqueur or cordial has been, and now is, manufactured by them exclusively, in accordance with a certain secret recipe or formula whereof the said order of Carthusian Monks has been and now is the sole proprietor, and which, by reason of its virtues and excellent qualities has become widely and favorably known, and is, and always has been, known and recognized by the distinctive name "Chartreuse," indicative of its manufacture by the said "Peres Chartreux." 20 21

That in consequence of the skill and care exercised by the said "Peres Chartreux" in the manufacture of said cordial or liqueur, and of the merit of said formula, a great demand therefor has been created and still exists throughout the world, which demand your orator and his associates are able and willing to supply.

II.

And your orator further shows that the said Order of Carthusian Monks, known as "Peres Chartreux,"

22 is a religious order or voluntary association, that your orator under the title of "Procureur" is the present business head of the said Order or Association, and has charge of and is responsible for the manufacture and sale of the liqueur aforesaid; and that on account of the great number of Monks, who are the associates of your orator in the Association of said order, it is impossible to join every one of them by name in this suit, wherefore your orator is constrained to bring this suit in his own name on behalf of himself and all of his associates.

III.

23 Further your orator shows that in the year 1904, the said order of Peres Chartreux, in consequence of the enforcement by the French Government of an enactment known as the Associations Act, removed the branch of said convent having charge of the manufacture of said cordial or liqueur to Tarragona, in the Kingdom of Spain, where the manufacture of said cordial or liqueur known as "Chartreuse" is still carried on in accordance with said original secret recipe or formula (which is still the exclusive property of said order) under the immediate supervision of your orator, who, in his capacity of Procureur, has custody thereof.

IV.

24 And your orator further shows upon information and belief that he and his said associates, and their predecessors in said order have, for upwards of three hundred years, made use of the word "Chartreuse" as a trade-mark to designate the said cordial or liqueur manufactured by them; and such trade-mark has been used, throughout the world, exclusively for that purpose; that said cordial or liqueur has been commonly packed in bottles of peculiar design, and packed in cases, both bottles and cases bearing conspicuously the trade-mark "Chartreuse," together with other distinctive marks and

symbols, such as facsimile of the signature of L. 25
Garnier, who was, about sixty years ago, the predecessor of your orator in the office of Procureur of said Order.

V.

That in the year A. D. 1876, the said Order by its then procureur, Frere (that is to say "Brother"), Marcel M. Grezier, caused the said name "Chartreuse" to be registered in the United States Patent Office on behalf of said Order, as evidenced by certificate of registration No. 3,377, dated January 25, 1876, as by reference thereto, or to a duly authenticated copy thereof, here in Court to be produced, will more fully appear; and that in the 26
year 1884 said Order caused a re-registration of said mark by its procureur (Frere Grezier), as evidenced by certificate No. 10,897, dated January 29, 1884, as by reference to said certificate, or a duly authenticated copy thereof, here in Court to be produced, will more fully appear; that said Frere Grezier, on behalf of said Order, fully complied with all the laws of the United States in respect to the registration of trade-marks; that said trade mark had been, prior to the earliest registration aforesaid, and continuously to the present time has been, used in commerce between the United States and a foreign country; and that said Order has at this time the right to the exclusive possession and 27
enjoyment of said trade-marks.

VI.

And your orator avers, upon information and belief, that since the removal of said Order from France, certain persons in said country have, without the consent of said Order, commenced the manufacture of a cordial or liqueur in imitation of that which has for many centuries been manufactured by your orator and his associates as aforesaid, and are marketing the same under the name "Char-

treuse," falsely representing that it is made in accordance with the famous recipe long owned (and still owned exclusively) by your orator, and, for the purpose of injuring your orator and his association and of deceiving the public, have offered the said imitation liqueur to the public in bottles and cases similar in appearance to those long used by your orator and associates as aforesaid, and bearing labels similar to those long used by your orator and associates, and placing thereon the trade-mark "Chartreuse."

VII.

And your orator has been informed and believes that the said defendants and each of them, acting jointly, without the consent of your orator and his associates, but in violation of their rights, have imported from France into the United States, at the port of New York, for sale and use, and have sold and used within the Southern District of New York and elsewhere in the said United States and the territories thereof large quantities of said spurious liqueur or cordial, in cases and bottles closely resembling in appearance, and bearing labels closely resembling those long used by said Order of Peres Chartreux, as aforesaid, the resemblance being so close as readily to deceive the public and bearing the trade-mark "*Chartreuse*"; and that the said defendants have thereby gained and received large profits but to what amount your orator is ignorant, and therefore prays a discovery; and that your orator and his associates have been damaged by the said acts of defendants and their confederates to the amount of one hundred thousand dollars. And your orator is informed and believes, and therefore avers, that these defendants are in like manner about to import and receive in the port of New York for sale and use within the Southern District of New York and elsewhere within the United States and the territories thereof, further quantities

of the said spurious trade-marks, labels and other 31
distinguishing marks of your orator and his associates, and will thereby cause irreparable injury to your orator and his associates unless this Court grants the relief hereinafter prayed.

VIII.

And your orator avers that the subject-matter here in dispute is of great value, exceeding the sum or amount of two thousand dollars ($2,000), exclusive of interest and costs.

IX.

And forasmuch as your orator and his associates 32
can have no relief save in this Honorable Court, your orator prays on behalf of himself and all of his said associates:

(1.) That your Honors will permit him to maintain this suit in his own name on behalf of himself and all of his associates composing the said order of Carthusian Monks (Peres Chartreux).

(2.) That a perpetual injunction, issuing out of and under the seal of this Honorable Court, may issue against this defendant forbidding it, and its associates, attorneys, successors, assigns, agents, clerks, servants and workmen from

(*a.*) infringing the said trade-marks or either of 33
them;

(*b.*) imitating the said labels or other distinctive markings and features of the genuine "Chartreuse" of your orator and his associates;

(*c.*) making use of the name "CHARTREUSE" or any imitation thereof in connection with liqueurs or cordials;

(*d.*) or in anywise representing that any liqueur or cordial or similar liquor not manufac-

34 tured by your orator and his associates or their successors in the said order of Carthusian Monks is the genuine Chartreuse, or is made in accordance with the secret process of the Carthusian Monks, or in any manner trading upon the reputation and good-will of your orator and his associates and their predecessors and successors in said Association.

(3.) That your Honors will grant a preliminary injunction, to the same purport, tenor and effect, as herein prayed for in regard to the perpetual injunction.

35 (4.) That this defendant may be compelled to account for all the profits, gains, savings and advantages derived or received by it, by reason of the unlawful acts herein complained of; and that this Court may assess or cause to be assessed the amount of damages sustained in the premises by your orator and his associates; and that this defendant may be compelled to pay to your orator as the representative of himself and all his associates in the said order of Carthusian Monks, the profits and damages so ascertained;

(5.) That your Honors will grant unto your orator
36 the costs of this proceeding and such other and further relief as the equity of the case may require.

To this end, therefore, that the said defendant may, if it can, show why your orator should not have the relief hereby prayed, and may full, true and direct answer make—but not under oath, answer under oath being expressly waived—according to the best and utmost of the knowledge, information, remembrance and belief of the defendant and of its officers and agents to all the allegations of this bill of complaint as fully and particularly as if the same were repeated, para-

graph by paragraph, and the said defendant and its officers and agents thereto severally and specifically interrogated, may it please your Honors to grant to your orator a writ of *subpœna ad respondendum* issuing out of and under the seal of this Honorable Court, directed to said defendant Cusenier Company, and commanding it to appear and make answer to this bill of complaint, and to perform and abide by such orders and decrees as to this Court may seem just. 37

And your orator will ever pray.

(Signed) ALFREDO LUIS BAGLIN,
Procureur of the Association of Carthusian Monks, on his own behalf and as representing all his associates in said Order. 38

(Signed) By HENRY BATJER,
His Attorney in Fact.

(Signed) PHILIP MAURO,
C. L. MASSIE,
Of Counsel.

(Signed) ELISHA K. CAMP,
Solicitor for Complainant.

Office and P. O. address,
277 Broadway,
Borough of Manhattan,
City of New York.

39

STATE OF NEW YORK, }
County of New York, } ss.:

HENRY BATJER, being duly sworn, deposes and says: I am a member of the firm of Batjer & Company, of 45 Broadway, New York City, which firm has been for about ten years last past the exclusive agents, for the United States of America, of the Order of Carthusian Monks, complainants herein, for the sale of the cordial or liqueur known as "Chartreuse," and am attorney in fact for the complainant, duly authorized to begin this action in his

name, as representing himself and all his associates in said Order; I have read the foregoing bill and know the contents thereof, and I believe the same to be true. My information is gained from correspondence with European agents of said Order, and from correspondence and conversations with local representatives of the same, and from general reading.

(Signed) HENRY BATJER.

Subscribed and sworn to before me this third day of January, 1905.

(Signed) OTTO M. BIERLING,
[SEAL.] Notary Public.

B. 43

At a Stated Term of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, held in the Court Rooms thereof, in the Federal Building, in the Borough of Manhattan and City of New York, on the 26th day of November, 1907.

Present: HON. CHARLES M. HOUGH,
United States Judge.

PERE ALFREDO LUIS BAGLIN, Superior General of the Order of Carthusian Monks, for Himself and all other Members of said Order, Complainants, 44

vs.

CUSENIER COMPANY, Defendant.

In Equity.

No. 8949.

Decree.

This cause coming on to be heard on Nov. 11, 1907, upon Bill, Answer and Replication, and full Proofs of the respective parties (comprising the Testimony of numerous witnesses who were subjected to cross-examination, as well as Exhibits), and Philip Mauro, Esq., for Complainants, and Charles Howson, Esq., for Defendant, having been heard both orally and by printed briefs, and the Court being fully advised in the premises; now, therefore, upon consideration thereof and on motion of Complainants' Solicitor, it is this day: 45

1. ADJUDGED, ORDERED and DECREED that the word-symbol "CHARTREUSE," as applied to liqueur

46 or cordial, is a good and valid trade-mark, and in this country has been and now is the sole and exclusive property of the Carthusian Monks or Fathers ("PERES CHARTREUX") complainants herein; and that the said word-symbol "Chartreuse" accompanied by the fac-simile signature of L. Garnier, as set forth in U. S. Trade-Mark Certificate No. 3,377, registered in the U. S. Patent Office Jan. 25, 1876 (re-registered Jan. 29, 1884, as No. 10,897), and in U. S. Certificate No. 3,989, registered Sept. 12, 1876 (re-registered Jan. 29, 1884, as No. 10,898), and as appearing upon "Complainant's Exhibit, Bottle of Chartreuse sold by Batjer & Co.," constitute good and valid trade-marks, and in this country have been and now are
47 the sole and exclusive property of said complainants the Carthusian Monks and Fathers ("PERES CHARTREUX"); and that in this country the said complainants still have the right, and the exclusive right, to use the said marks, or any of them, upon liqueurs or cordials manufactured by the complainants.

2. It is further ADJUDGED, ORDERED and DECREED that the defendant herein the Cusenier Company has infringed the said trade-marks and each of them, and has violated complainants' rights in the premises, by importing and causing to be imported, selling and causing to be sold, and offering for sale and causing to be offered for sale, in the United
48 States, liqueur or cordial not manufactured by the complainants herein, but purporting to be "Chartreuse" and put up in packages having affixed thereto the trade-marks above referred to.

3. It is further ADJUDGED, ORDERED and DECREED that defendant herein the Cusenier Company has been guilty of unfair competition with complainants by importing and causing to be imported, by selling and causing to be sold, and by offering for sale and causing to be offered for sale, in the United States, liqueur or cordial not manufactured by complainants, but put up in bottles, dress, etc., resembling

in all substantial respects the bottles, dress, etc., 49
hitherto employed by complainants in marketing their genuine Chartreuse; and particularly by selling or offering for sale the bottle of liqueur now on file in this Court as "Complainants' Exhibit, Defendant's Liqueur."

4. It is further ADJUDGED, ORDERED, and DECREED that defendant, its associates, successors, assigns, officers, servants, clerks, agents, and workmen, and each of them be, and they hereby are, *perpetually enjoined* from using in this country or in any possession thereof, in connection with any liqueur or cordial not manufactured by complainants, the Trade-Mark "Chartreuse" or of any colorable imitation 50
thereof, or the fac-simile signature of L. Garnier, or any colorable imitation thereof, or any of the trade-marks above referred to, or any colorable imitation thereof; and they and each of them are likewise *perpetually enjoined* from importing or putting out or selling or offering for sale, directly or indirectly, within this country, any liqueur or cordial not manufactured by complainants, in any dress or package like or simulating in any material respects the dress or package heretofore used by complainants, and in particular from making use of any bottle or label or package like or substantially similar to "Complainants' Exhibit, Defendant's Liqueur," being the bottle now on file as an exhibit in this 51
Court, and from in any wise attempting to make use of the good-will and reputation of complainants in putting out in this country any liqueur or cordial not made by complainants.

5. It is further ADJUDGED, ORDERED, and DECREED that the matter be referred to John A. Shields, Esq., as Master, to take the usual accounting and report to this Court with all convenient speed the amount of defendant's profits by reason of the infringements and wrongs above referred to, together with the quantity of the infringing article now in possession

52 or control of defendant or of any of its officers, servants, or privies.

6. And it is further ADJUDGED, ORDERED, and DECREED that complainants do recover from defendant their taxable costs herein; and that execution issue for the same and for the amounts found due on the accounting.

(Signed) C. M. HOUGH,
U. S. J.

(Endorsed: In the Circuit Court of the United States for the Southern District of New York.—Pere Alfredo Luis Baglin, &c. *vs.* Cusenier Company.—In Equity, Docket No. 8949.—DECREE.—
53 Philip Mauro, C. A. L. Massie, Ralph L. Scott, of Counsel for Complainants, Tribune Bldg., New York City.—U. S. Circuit Court, Southern District of New York.—Filed Nov. 26, 1907.—John A. Shields, Clerk.)

C.

UNITED STATES OF AMERICA, ss.:

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, GREETING:

54

WHEREAS, lately in the Circuit Court of the United States for the Southern District of New York, before you, or some of you, in a cause between Pere Alfredo Luis Baglin and the Cusenier Company a decree was entered in the office of the Clerk of said Court on the 26th day of November, 1907, in the words and figures following, to wit:

"This cause coming on to be heard on Nov. 11, 1907, upon bill, answer and replication and full proofs of the respective parties (comprising the testimony of numerous witnesses who were subjected to cross-examination, as well as exhibits) and Philip Mauro

Esq., for complainant, and Charles Howson, Esq., for defendants, having been heard both orally and by printed briefs, and the Court being fully advised in the premises, now, therefore, upon consideration thereof and on motion of complainants' solicitor it is this day 55

1. Adjudged, ordered and decreed that the word symbol 'Chartreuse' as applied to liqueur or cordial is a good and valid trade mark and in this country has been and is now the sole and exclusive property of the Carthusian Monks or Fathers ('Peres Chartreux') complainants herein and that the said word symbol 'Chartreuse' accompanied by the fac-simile signature of L. Garnier as set forth in U. S. Trade Mark Certificate No. 3377, registered in the U. S. Patent Office January 25, 1876 (re-registered January 29, 1884, as No. 10,897) and in U. S. Certificate No. 3989, registered September 12, 1876 (re-registered January 29, 1884 as No. 10,898), and as appearing upon 'Complainants' Exhibit Bottle of Chartreuse sold by Batjer & Co.,' constitute good and valid trade marks and in this country have been and now are the sole and exclusive property of said complainants the Carthusian Monks or Fathers ('Peres Chartreux'); and that in this country the said complainants still have the right, and the exclusive right, to use the said marks or any of them upon liqueurs or cordials manufactured by the complainants. 56

2. It is further adjudged, ordered and decreed that the defendant herein, the Cusenier Company, has infringed the said trade marks and each of them and has violated complainants' rights on the premises by importing and causing to be imported, selling and causing to be sold and offering for sale and causing to be offered for sale in the United States liqueur or cordial not manufactured by the complainants herein but purporting to be 'Chartreuse' and put up in packages having affixed thereto the trade marks above referred to. 57

3. It is further adjudged, ordered and decreed that defendant herein, the Cusenier Company, has been guilty of unfair competition with complainants by importing and causing to be imported, by selling and causing to be sold, and by offering for sale and causing to be offered for sale in the United States liqueur or cordial not manufactured by complainants but put up in bottles, dress, etc., resem-

58 bling in all substantial respects the bottles, dress, etc., hitherto employed by complainants in marketing their genuine Chartreuse; and particularly by selling or offering for sale the bottle of liqueur now on file in this Court as 'Complainants' Exhibit Defendants Liqueur.'

4. It is further adjudged, ordered and decreed that defendant, its associates, successors, assigns, officers, servants, clerks, agents and workmen and each of them be and they hereby are perpetually enjoined from using in this country or in any possession thereof, in connection with any liquor or cordial not manufactured by complainants, the trade mark "Chartreuse" or of any colorable imitation thereof—or the fac-simile signature of L. Garnier or any colorable imitation thereof—or any of the trade marks above referred to or any colorable imi-
59 tation thereof; and they and each of them are likewise perpetually enjoined from importing or putting out or selling or offering for sale, directly or indirectly within this country, any liqueur or cordial not manufactured by complainants in any dress or package like or simulating in any material respects the dress or package heretofore used by complainants—and in particular from making use of any bottle or label or package like or substantially similar to "Complainants' Exhibit Defendant's Liqueur," being the bottle now on file as an exhibit in this Court—and from in any wise attempting to make use of the good will and reputation of complainants in putting out in this country any liqueur or cordial not made by complainants.

5. It is further adjudged, ordered and decreed that
60 the matter be referred to John A. Shields, Esq., as Master to take the usual accounting and report to this Court with all convenient speed the amount of defendant's profits by reason of the infringements and wrongs above referred to, together with the quantity of the infringing article now in possession or control of defendant or any of its officers, servants or privies.

6. And it is further adjudged, ordered and decreed that complainants do recover from defendant their taxable costs herein; and that execution issue for the same and for the amounts found due on the accounting.

C. M. Hough,
U. S. J."

as by the inspection of the transcript of record of 61
the said Court, which was brought into the United States Circuit Court of Appeals for the Second Circuit, by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

AND WHEREAS, in the present term of October, in the year of our Lord one thousand nine hundred and seven, the said cause came on to be heard before the said United States Circuit Court of Appeals for the Second Circuit, on the said transcript of record, and was argued by counsel:

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, 62

That the decree of said Circuit Court be and it hereby is amended in accordance with the opinion of this Court, and as so amended is affirmed, without costs to either party in this Court.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in accordance with the decision of this Court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

WITNESS, the Honorable MELVILLE W. FULLER, Chief Justice of the United States, the 22nd day of August, in the year of our Lord one thousand nine hundred and eight. 63

(Signed) WM. PARKIN,
[SEAL.] Clerk of the United States Circuit Court of Appeals for the Second Circuit.

64 **D.**

At a Stated Term of the Circuit Court of the United States for the Southern District of New York, held in the Court Room thereof, in the Federal Building, in the Borough of Manhattan and City of New York, and State of New York, on the 1st day of November, 1908.

Present--Hon. E. HENRY LACOMBE,
United States Circuit Judge.

65 PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all of the other Members of the said Order, Complainants,

vs.

THE CUSENIER COMPANY, Defendant.

In Equity, No. 8949. "Chartreuse."

Order.

66 On reading the mandate herein of the Circuit Court of Appeals for the Second Circuit, dated August 22, 1904, and filed in this Court on November 18, 1908; now, after hearing Messrs. A. L. Pincoffs and Roger Foster, of counsel for defendant, and Messrs. C. A. L. Massie and Ralph L. Scott, of counsel for complainants, it is this day

ORDERED, ADJUDGED AND DECREED, that said mandate be entered, and that the said mandate be and it hereby is made the order, judgment and decree of this Court; and it is further

ORDERED, ADJUDGED AND DECREED, that the type- 67
written paper entitled "Decree," dated and entered herein on November 26, 1907 (being the original decree herein), be and the same hereby is modified as follows:

On page 3 thereof, in the paragraph numbered "4," in line 8 of said paragraph, after the word "thereof," insert the following:

"unless so used as clearly to distinguish such liqueur or cordial from the liqueur or cordial manufactured by the complainants";

in line 18, of said paragraph 4, strike out the words "bottle or," and in the same line substitute the word "symbol" for the word "package," and after the words "similar to," being 68
the last word of the same line and the first word of the next line (line 19), insert the words "those appearing on."

So that the said paragraph numbered 4 shall read:

"4. It is further ADJUDGED, ORDERED and DECREED, that defendant, its associates, successors, assigns, officers, servants, clerks, agents and workmen, and each of them be, and they hereby are, *perpetually enjoined* from using in this country or in any possession thereof, in connection with any liqueur or cordial not 69
manufactured by complainants, the trademark "Chartreuse" or of any colorable imitation thereof unless so used as clearly to distinguish such liqueur or cordial from the liqueur or cordial manufactured by the complainants, or the fac-simile signature of of L. Garnier, or any colorable imitation thereof, or any of the trade-marks above referred to, or any colorable imitation thereof; and they and each of them are likewise *perpetually enjoined* from importing or putting out or selling or offering for sale, directly or

indirectly, within this country, any liqueur or cordial not manufactured by complainants, in any dress or package like or simulating in any material respects the dress or package heretofore used by complainants, and in particular from making use of any label or symbol like or substantially similar to those appearing on 'Complainants' Exhibit Defendant's Liqueur,' being the bottle now on file as an exhibit in this Court; and from in anywise attempting to make use of the good-will and reputation of complainants in putting out in this country any liqueur or cordial not made by complainants."

And it is further ORDERED, ADJUDGED, and DECREED that the aforesaid decree of this Court, filed and entered herein November 26, 1907, as above modified, be and the same hereby is made the order, judgment and decree of this Court; and it is further

ORDERED, ADJUDGED and DECREED that a writ of perpetual injunction herein, in conformity with the decree as above modified, be issued out of and under the seal of this Court, and that the issuing of said new writ of injunction shall operate to vacate the one originally issued.

(Sgd.) E. HENRY LACOMBE,
United States Circuit Judge.

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all of the other Members of said Order,
Complainants, Appellants,

AGAINST

THE CUSENIER COMPANY,
Defendant, Respondent.

No. 614.
October Term,
1908.

BRIEF IN REBUTTAL FOR DEFENDANT, RESPONDENT UPON MOTION TO DISMISS APPEAL.

I.

The ingenious argument of the learned counsel for the complainants-appellants, is based upon the proposition that the determination of a master, as to what profits have been made by the manufacture and sale of goods, does not involve the exercise of judicial functions and is merely ministerial.

The decision thereof involves the consideration of questions as to the admissibility of evidence upon the subject, which may be taken from other sources, as well as from the books of defendant-respondent, and the decision of disputed questions of fact and law. No more difficult questions can be found in

the books than those concerning an accounting of profits from the use of patents and from trademarks.

The point that a distinction exists between an accounting for damages and one merely for profits is set at rest by the case of *Hanniser* v. *Stainthorpe*, 2 Wall. 106.

That was a patent case, where an injunction was decreed with an account of "gains and profit." It was held that such a decree was interlocutory and not final.

This case is cited in the opinion in *ex parte National Enameling Co.*, 201 U. S. 156, 160, in which the learned counsel for appellants appeared, in support of the proposition that the decree therein, which he then contended was final, was in reality only an interlocutory decree.

The learned counsel for the appellants is mistaken in stating that the decree in the case at bar was not self-executing (see p. 4 of his brief), and that no further judicial action was contemplated. On the contrary, it is expressly ordered (Motion Papers, p. 17) that the matter be referred to John A. Shields, as Master, "to take the *usual accounting* and *report to this Court* with all convenient speed, the amount of defendant's profits."

It is clear, therefore, that when it was afterwards stated that execution issue for the amount found due on the accounting, this meant that such amount as shall be found due after the Master's report shall be confirmed by the Court in the usual manner.

II.

We insist that the interlocutory decree is not appealable.

If, however, this Court is of the opinion that the filing *nunc pro tunc* of a remittitur releasing the

claim for profits, when made by our consent, will validate the appeal; we readily consent to such a course. It is the desire of the defendant respondent to interpose no obstacle to the decision of the important questions involved in this case by the highest tribunal in the land, in the manner that is quickest and that will necessitate the least expense. If, on the other hand, the Court thinks that the filing of such a remittitur will require a new appeal, we consent to the return of the transcript to the Court below, and to its use upon any subsequent appeal and to anything that may be deemed necessary by this Court, in order to bring the whole matter before it, expeditiously and economically, provided that none of our rights are waived. We reserve, however, all our rights to object to each and all of the proceedings in the Courts below.

Respectfully submitted,

A. L. PINCOFFS,
ROGER FOSTER,
Of Counsel for Defendant-Respondent.

IN THE

Supreme Court of the United States.

99.

No. [redacted] OCTOBER TERM, 1908.

PERE ALFREDO LUIS BAGLIN, SUPERIOR-GENERAL OF THE ORDER OF CARTHUSIAN MONKS, FOR HIMSELF AND ALL OTHER MEMBERS OF SAID ORDER,

Complainant Appellant,

against

CUSENIER COMPANY,

Respondent.

(21,410.)

Brief in Support of Motion to Dismiss Appeal.

A. L. PINCOFFS,
ROGER FOSTER,
Of Counsel for Respondent.

THE EVENING POST JOB PRINTING OFFICE, 156 FULTON ST., N. Y.

IN THE

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all other members of said order,
Complainant Appellant,

AGAINST

CUSENIER COMPANY,
Respondent.

(21,410.)

No. 614.
October Term,
1908.

BRIEF IN SUPPORT OF MOTION TO DISMISS APPEAL.

Statement.

This is an appeal from an order of the Circuit Court of Appeals for the Second Circuit, which modified and in other respects affirmed a decree for an injunction and accounting, in a suit to enjoin the infringement of an alleged trade-mark.

The decree of the Circuit Court (164 Fed. 25) from which the appeal was taken to the Circuit Court of Appeals enjoined the alleged infringement of said alleged trade-mark, and also provided for an accounting of the profits. No accounting has been had. The modification contained in the order and

mandate of the Circuit Court of Appeals related purely to the injunctive relief granted in the decree and left the direction for an accounting in full force and effect.

The bill in equity prayed an accounting as well as an injunction.

The motion to dismiss is made for the reason that this is not a final decree.

I.

This Court has no jurisdiction to review the decision of a Circuit Court of Appeals, which affirms, reverses or modifies an appeal from an interlocutory decree for an injunction.

Kirwan v. *Murphy*, 170 U. S. 205.

II.

The decree of the Circuit Court was not final, but was merely interlocutory.

It provided not only for an injunction, but also for an accounting.

There could be no final decree in the case until the accounting is terminated (*Brown* v. *Swann*, 9 Peters, 1; *Barnard* v. *Gibson*, 7 Howard, 650; *Beebe* v. *Russell*, 19 Howard, 283; *Keystone Manganese & Iron Co.* v. *Martin*, 132 U. S. 91; *McGourkey* v. *Toledo & Ohio Central Ry. Co.*, 146 U. S. 536; *California Nat. Bank* v. *Stateler*, 171 U. S. 447; *Union Mutual Life Ins. Co.* v. *Kirchoff*, 160 U. S. 374; *Hollander* v. *Fecheimer*, 162 U. S. 326). Until that time the Circuit Court may at any time, modify the in-

junction upon motion without any bill of review several years after the decree was entered (*Barnard* v. *Gibson*, 7 Howard, 650, 657, quoted *infra; Comly* v. *Buchanan*, 81 Fed. 58).

That a decree which directs an accounting is not a final decree, was the rule of the English Court of Chancery, *Daniell's Ch. Pr.*, 1st Am. Ed., 1193, and has been followed by this Court since the time of Chief Justice Marshall.

In *Brown* v. *Swann*, 9 Peters, 1, 2, 3, the service below was thus:

"It is thereupon by the Court adjudged and de-
" creed, that the injunction heretofore awarded the
" complainant be perpetual except as to the said
" sum of nine hundred and forty-nine dollars and
" seventy cents, of which sum the defendant is at
" liberty to proceed under her judgment for the sum
" of eight hundred and ninety dollars and seventy
" cents; and on the complainant's motion, for reasons
" appearing to the Court, this cause is continued for
" further consideration as to the said sum of fifty
" dollars, part of the credit claimed by the com-
" plainant."

" Mr. Chief Justice Marshall delivered the opinion
" of the Court, dismissing the appeal, with costs,
" because the appeal was granted before there was a
" final decree in the case.

" On appeal from the Circuit Court of the United
" States for the District of Columbia, holden in
" and for the County of Alexandria, on considera-
" tion of the motion made in this cause yesterday,
" by Mr. Edmund J. Lee, of counsel for the appel-
" lees, to dismiss this cause, because the appeal was
" granted before there was a final decree rendered
" in the Courts below, and of the arguments of
" counsel thereupon, had as well for the appellant
" as for the appellees, it is now here ordered, ad-
" judged and decreed by this Court that this ap-
" peal be, and the same is hereby, dismissed, with
" costs."

In *Barnard* v. *Gibson*, 7 Howard, 650, 656, 657, 658, this Court said, speaking through Mr. Justice M'Lean: "The cause was submitted to the "circuit judge, who decreed that the defendants "below be perpetually enjoined from any further "constructing or using in any manner the two "planing-machines, &c., and the case was referred "to a master to ascertain and report the damages "which the plaintiff had sustained, arising from "the infringement of his rights by the defendants "by the use of the said two machines." * * *

"The decree in the case under consideration is "not final, within the decisions of this Court. The "injunction prayed for was made perpetual, but "there was a reference to a master to ascertain the "damages by reason of the infringement; the bill "was not dismissed, nor was there a decree for "costs. * * * It is said that the decree in this "case, by enjoining the defendants below from the "use of their machine, destroys their value and "places the defendants in a remediless condition. "That in the course of a few months their right to "run the machines will expire, and that no repara-"tion can be obtained for the suspension of a right "by the act of the Court. It is alleged, too, that "many thousands of dollars have been invested in "the machinery, which by such a procedure be-"comes useless. The hardship stated is an un-"answerable objection to the operation of the in-"junction, until all the matters shall be finally ad-"justed. *If the injunction has been inadvertently "granted, the Circuit Court has power to suspend "it or set it aside, until the report of the master "shall be sanctioned.*"

The rule is reiterated in *Beebe* v. *Russell*, 19 Howard, 283, which cites a number of authorities in the State Courts of Chancery.

In *Keystone Manganese & Iron Co.* v. *Martin*, 132 U. S. 91, 92, 93; this Court said speaking "through Mr. Justice Blatchford: "The Court made

"a decree perpetually enjoining the defendant from "entering upon or removing the mineral or any "part thereof from the land, and further ordering "that an account be taken of the quantity and value "of the mineral and ore already removed by the "defendant from the land, and that the defendant "account to the plaintiff for its value, and appoint- "ing a master to take said account and to hear "evidence and report the same to the Court. "From that decree the defendant has appealed to "this Court, and the case has been argued by the "appellee on its merits, and submitted on a printed "brief by the appellant. We think that the decree "is not a final decree, and that this Court has no "jurisdiction of the appeal. The decree is not "final, because it does not dispose of the entire "controversy between the parties. The bill prays "only for an injunction and an account of the "quantity and value of the ore taken from the "land by the defendant. The injunction is granted, "but the account remains to be taken. The case "is not one where nothing remains to be done by "the Court below except to execute ministerially its "decree. In all cases like the one before us this "Court has uniformly held that the decree was not "final and was not appealable."

In *McGourkey* v. *Toledo & Ohio Central Ry. Co.*, 146 U. S. 536, 545, 549, this Court said, speaking through Mr. Justice Brown (the italics are ours): "It may be said in general that if the Court make a "decree fixing the rights and liabilities of the par- "ties, and thereupon refer the case to a master for "a ministerial purpose only, and no further pro- "ceedings in court are contemplated, the decree is "final; but *if it refer the case to him* as a subor- "dinate Court and for a judicial purpose, as *to state* "*an account* between the parties, upon which a "further decree is to be entered, *the decree is not* "*final. Craighead* v. *Wilson*, 18 How. 199; *Beebe* "v. *Russell*, 19 How. 283. * * * In the case of

"the *Keystone Manganese Co.* v. *Martin*, 132 U. S., "91, the bill was in the nature of an action of tres- "pass for removing minerals from the plaintiff's "land, and prayed for an injunction restraining the "defendant from the commission of further tres- "passes, and for an account of the quantity and "value of the ore taken. The Court made a decree "perpetually enjoining the defendant from entering "upon or removing minerals from the land, and "further ordering an account, etc. This was held "to be not a final decree from which an appeal "could be taken to this Court, because it did not "dispose of the entire controversy between the par- "ties. This case is directly in point, and was re- "ferred to with approval in *Lodge* v. *Twell*, 135 "U. S. 232."

In *Latta* v. *Kilbourn*, 150 U. S. 524, 537, 538, 540, the first quotation from the opinion of Mr. Justice Brown was approved by this Court, speaking through Mr. Justice Jackson. There, it was held that a decree, which determined the rights of partners in the assets and profits of the partnership and decreed "that said defendant do account to the com- " plainants for their said share of the profits afore- " said; that this cause be, and the same hereby is, " remanded to the Court in special term, with in- " structions to refer the same to the auditor of the " Court to state said account upon the proofs in the " cause, and such further proofs as the parties may " offer, and for such further proceeding as may be " lawful and proper under this decree; and that " said defendant pay all costs of the cause;" was not a final decree.

This Court approved the same rule in *California National Bank* v. *Stateler*, 171 U. S. 447, 449; where a decree was held not to be final because thereafter " it would certainly be necessary for Chetwood to " prove out his costs, disbursements and attorneys' " fees before the amount for which he is ultimately " made liable could be ascertained. The settled " rule is that if a superior court makes a decree

"fixing the liability and rights of the parties and "refers the case to a master or subordinate court "for a judicial purpose, such, for instance, as a "statement of account, upon which a further decree "is to be entered, the decree is not final."

Similar rulings were made in *Union Mutual Life Ins. Co.* v. *Kirchoff*, 160 U. S. 374, 378; *Hollander* v. *Fecheimer*, 162 U. S. 326.

III.

The appeal should be dismissed, with costs.

Respectfully submitted,

A. L. PINCOFFS.

ROGER FOSTER,
Of Counsel for Respondent.

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior General of the Order of Carthusian Monks, for Himself and all of the other Members of said Order,

Petitioners,

against

THE CUSENIER COMPANY,

Respondent and Cross-Petitioner.

Notice.

To PHILIP MAURO, Attorney and Counsel for Pere Alfredo Luis Baglin, etc.

Please take notice that upon the submission to the Supreme Court of your petition for Writ of Certiorari we shall submit the annexed answer, cross-petition for Writ of Certiorari and brief.

Dated, New York, March 30th, 1909.

ADOLPH L. PINCOFFS,
ROGER FOSTER,
Attorneys and of Counsel for
The Cusenier Company.

Service of the foregoing notice and annexed answer, cross-petition and brief is hereby admitted this day of March, 1909.

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior General of the Order of Carthusian Monks, for Himself and all of the other Members of said Order,

Petitioners,

against

THE CUSENIER COMPANY,

Respondent and Cross-Petitioner.

Motion.

And now comes the Cusenier Company, by Adolph L. Pincoffs and Roger Foster, its attorneys, and move this Honorable Court, upon the certified Transcript of Record herein, and upon the annexed cross-petition, for a cross-writ of Certiorari directed to the Honorable the Judges of the United States Circuit Court of Appeals, within and for the Second Judicial Circuit, commanding said Court of Appeals to certify and bring before this Honorable Court the above entitled cause—lately before said Court of Appeals, wherein this respondent as defendant-appellant and the petitioners therein were complainants-appellees, for such further proceedings and for such relief as to this Honorable Court may seem just.

THE CUSENIER COMPANY,
By ADOLPH L. PINCOFFS and
ROGER FOSTER,
its Attorneys.

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior General of the Order of Carthusian Monks, for Himself and all of the other Members of said Order,

Petitioners,

against

THE CUSENIER COMPANY,

Respondent and Cross-Petitioner.

Answer and Cross-Petition.

TO THE HONORABLE THE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The answer and cross-petition of the Cusenier Company respectfully show as follows:

1. It denies that the Order of Carthusian Monks is also known as the congregation of or Order of the Chartreux. It denies that it had maintained almost uninterruptedly for several hundred years its main Chartreuse and it further alleges that said order was an illegal and unauthorized Congregation and had not a right to own any property in the Republic of France.

2. It denies that said Carthusian Monks have carried on a manufacture of a certain liqueur or cordial for several hundred years, and it denies that said liqueur was manufactured in accordance with a secret recipe or formula and that said liqueur is exclusively manufactured by them. It denies that said liqueur is or has been favorably known by reason of the good repute of its makers, and it denies that the word "Chartreuse" constitutes a tradename, and it alleges that the reputa-

tion of said article was due to the peculiar qualities of the herbs which grew in the locality where said liqueur was manufactured, which locality had been known as Chartreuse long before the establishment of the said Monks.

3. It denies that the establishment at Tarragona referred to in Paragraph 3 of the petition is a continuance of the ancient business of making the liqueur or cordial known as Chartreuse, and it denies that any liqueur called "Chartreuse" is manufactured there and that the liqueur manufactured there is manufactured in accordance with any secret recipe or formula; and it denies that identically the same ingredients are used now for the said manufacture as had been used from time immemorial.

4. It admits that the liqueur or cordial manufactured by the monks prior to their expulsion from France has been commonly packed in the bottles and with the designs printed appearing opposite to page 4 of the petition, and it denies that the same are correctly set out in Paragraph 4 of said petition.

5. It denies that the registration referred to in Paragraph 5 of the petition was caused to be made by the said Order, or on its behalf, and it denies that the said registration was for the name Chartreuse, and that any rights were conferred by the same registration to the said Order or to the complainants herein.

6. It denies that the appointment and powers of Henri Lecouturier and his agreement with Mr. Joseph Cusenier are correctly set forth in Paragraph 6 of the petition, and it alleges that said Mr. Lecouturier was expressly and duly authorized and instructed by the Courts of the Republic of France to continue the business formerly carried on by the Carthusian Monks at the place where

such business had been carried on by them, and that the title to all the trademarks, tradenames and goodwill was vested in him by virtue of Decrees of the Courts having jurisdiction in the premises, and that he was given the exclusive right to harvest the plants, to which the cordial manufactured by the monks owed its peculiar qualities and reputation.

7. It admits that a bill was filed by the petitioners herein against it praying for the usual injunction and accounting. It was alleged in said bill that the defendants had made use of the word "Chartreuse" as a trademark to designate the said cordial or liqueur manufactured by them and that they attempted to sell to the public a spurious imitation article falsely representing that it was made pursuant to the co-called secret recipe which complainants claimed to own, and that said imitation liqueur was offered in bottles and cases similar in appearance to those long used by the complainants for the purpose of injuring the complainants and of deceiving the public. No evidence was introduced that any representation had ever been made by the defendant that the liqueur manufactured by it was made according to any recipe owned by complainants. It was found by the Circuit Court of Appeals that the liqueur had never been designated by the complainants as Chartreuse, that said word was of geographical origin and had been used on the labels in a geographical sense and that it had acquired a secondary meaning, indicating both that it was manufactured by monks and that it was made at a certain place, that its reputation was due to a great extent to the peculiar plants which grew in that locality; that the defendants had acted in good faith and in pursuance of the decrees of the Courts of the Republic of France by which the liquidator had been appointed, that the proof of deception was extremely unsatisfactory, that the parties represented by the

defendant had acquired the right in France to use the old labels and bottles and to designate their liqueur by the name of "Chartreuse", and also the right to manufacture their liqueur at the place where the herbs grew which gave the said liqueur its peculiar character and that they were entitled to mention this fact on their labels and bottles and to all the advantages resulting therefrom, and that to deprive them of the right to mention said locality would be to deprive them of a substantial right. In giving the defendant the right to make use of the word "Chartreuse", if it was so used as clearly to distinguish such liqueur from the liqueur or cordial manufactured by the complainants, the said Circuit Court of Appeals followed, as is stated in its opinion, the English Decree, which is referred to in the brief attached to the petition as the leading authority in favor of the complainants herein.

Cross Petition.

The said Cusenier Company further presents its cross petition and respectfully shows as follows:

1. That the complainants herein were, prior to the passage of the Association Act of 1901, an illegal and unauthorized association, having no civil rights and existing only by reason of a toleration which was entirely extra-legal and could be withdrawn at any time.

2. Before said Lecouturier was appointed as liquidator under the Association Act all the property of the Order, including all trademarks and goodwill, had been transferred by it to one Rey, a former procureur of the Order, by a deed bearing date of the 20th of November, 1897.

3. Thereafter it was finally decided by a Court of competent jurisdiction of the Republic of France, viz., the Court of Cassation, by its decision of July 31, 1906, that said Rey was a passive

trustee and that the property transferred to him formed part of the assets to be so liquidated, and the title thereto was vested in the said Lecouturier and passed to the Compagnie Fermiere de la Grande Chartreuse, whose agent the defendant is.

4. That all the proceedings appointing said Lecouturier as liquidator and determining the extent of the rights vested in him, and all the other proceedings determining the rights of the respective parties herein, were made by Courts of competent jurisdiction in France after due notice to the complainants herein, and after they had been heard in respect to their rights; that all such property, trademark, good will, so vested in Lecouturier were obtained at a judicial auction sale held by order of the Court having jurisdiction of the premises, by the Compagnie Fermiere de la Grande Chartreuse, and are now vested in it.

That these defendants were the agents, at the beginning of the suit, of said Mr. Lecouturier, and are now the agents of the Compagnie Fermiere de la Grande Chartreuse.

5. The complainants herein had no property in the United States, they did not manufacture the liqueur here. After they began the manufacture at Taragona they completely abandoned the old labels and trademarks and use of the word Chartreuse, and gave the widest publicity, not only in trade papers but in papers of general circulation, to the fact that the old labels no longer indicated that the liqueur was manufactured by them. The evidence adduced by complainants shows that this fact was known to the trade and there is no evidence whatever that any one of the public was deceived into the belief that the liqueur sold by the defendant was manufactured by the Monks.

6. The word "Chartreuse" was a geographical term, designating the place or territory where the monks formed their establishment, it was never

used by the monks to designate their liqueur; at the most it could be said to have acquired a secondary meaning, denoting not only that the liqueur was manufactured by monks but primarily that it was manufactured at a certain place, the habitat of the herbs to which the liqueur owes its peculiar aroma and qualities.

7. The said Circuit Court of Appeals in its opinion recognized the fact that the primary meaning of the word "Chartreuse" was geographical and that it only later acquired a secondary meaning, but yet it affirmed that part of the decree of the Circuit Court which holds that the word symbol "Chartreuse" constitutes a technical trademark. It recognized that there is no proof of actual deception, that the defendant has acted in absolute good faith and is not to be treated as a pirate, and it then proceeded to give the complainants relief which can only be justified if the fact of unfair competition had been affirmatively found to exist.

8. From this it will be seen that this case involves the determination of important questions:

Whether geographical expressions can ever be considered as technical trademarks and entitled to protection as such;

Whether a trademark or protection against unfair competition can be claimed, not only after the word and label for which protection is sought, have been abandoned, but after it has been proved that the former owner has given publicity to the fact that they no longer represent the article of his manufacture, and after it has been proved that he has succeeded in convincing the public of that fact.

Whether, in the absence of any business or manufacture in the United States, a foreign corporation can claim title to a trademark, the title to which it has lost by virtue of a decree of a competent court in its country of origin, after full notice and opportunity to be heard, and whether

relief can be granted on the ground of unfair competition after it has been affirmatively found that the defendant has acted in good faith, and when there is no evidence that the public has been deceived.

WHEREFORE, in order that the foregoing and other matters may be properly considered and adjudicated, your petitioners pray that this Honorable Court will grant its cross writ of Certiorari, directed to said Circuit Court of Appeals, for the Second Circuit, requiring the complete record of this cause in said Court to be certified to this Court, and that this Court will thereupon proceed to correct the errors herein complained of, and such other errors as may appear in said record, and reverse the decree of said Circuit Court of Appeals, in so far as it affirms the decree of the Circuit Court, and remand said cause with directions to dismiss the bill herein and give to your Petitioners such other and further relief as the nature of the case may require, and to the Court may seem proper in the premises.

And your Petitioner will ever pray.

THE CUSENIER COMPANY,
By
JULES AUBRY, (L. S.)
Vice-President.

ADOLPH L. PINCOFFS and
ROGER FOSTER,
Its Attorneys and Counsel.

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all of the other Members of the Order,

against

THE CUSENIER COMPANY.

BRIEF IN SUPPORT OF CROSS-PETITION.

The Petitioners in this case have taken an appeal to this Court which we have moved to dismiss on the ground that the decree appealed from is not a final one.

If the Petitioners have the right to appeal at any time either from the decree in its present form, or after the accounting has been had, it could only be on the ground that this suit involves rights granted under the Trademark Law of the United States.

If this position is well taken, the decision of the Circuit Court was not originally based exclusively on any alleged diverse citizenship of the parties hereto. If this is so, the decree is not final and no Writ of Certiorari can be allowed.

Without discussing this point at length, we merely wish to say that if the Court should decide to grant the Writ of Certiorari, we desire to have the case in its entirety brought before the Court so as to have an opportunity to raise the points on which we rely in support of our claim that the Circuit Court of Appeals should have directed the bill to be dismissed.

Some of the grounds which we desire to urge on the Court and which we consider of great interest are as already outlined in our Cross-Petition:

I. That, it being practically undisputed that the word "Chartreuse" is of geographical origin, it can never become a technical trademark. If it can be protected at all it must be on the ground that it has acquired a secondary meaning and entitles the user to be protected against unfair competition.

The evidence in this case shows that the term sought to be protected is more closely identified with the place of fabrication than with the name of the manufacturer, and apart from this, the evidence shows that every element of unfair competition is wanting.

II. Perhaps of still greater importance for the public is the question whether a foreign company which does not manufacture its products in this country, can acquire a trademark and good will so entirely independent from that existing in the country of origin, that it survives the decree of a competent court therein in a suit to which it has been a party, transferring the title to all its property, specifically mentioning the good will and trademarks, to a receiver, and whether its right will be held to be superior to that of a third party in the country of origin, who has acquired his title from the receiver in pursuance of a decree of a court having jurisdiction in the premises.

III. Another question is whether the right to a trademark or the right to be protected from so-called unfair competition can exist after the party claiming such protection has by its own acts induced the public to believe that such trademark or label no longer indicates articles of its manufacture.

We do not wish now to argue the merits of this case at length, we merely submit the foregoing arguments which show that if the Court should grant the petition for Writ of Certiorari of the complainant, it is only fair to the defendant that it be given an opportunity to raise these points on the hearing so that the whole matter may be before this Court and may be decided by it in accordance with justice and equity.

Respectfully submitted,

THE CUSENIER COMPANY

By

ADOLPH L. PINCOFFS and

ROGER FOSTER,

its Attorneys and Counsel.

In the Supreme Court of the United States

No. 99. October Term, 1909.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all other members of said Order

Petitioners

against

CUSENIER COMPANY

Respondent

(21,410)

Notice, Answer to Petition for Certiorari and Brief

A. L. PINCOFFS
ROGER FOSTER
of Counsel for Respondent

Telephone 7220 Cort. The Weibenahl Print 16 Broadway N. Y.

Supreme Court of the United States.

PÈRE ALFRED LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all of the other Members of said Order.

Petitioners,

against

THE CUSENIER COMPANY,

Respondent.

No. 291.
October Calendar. 1909.

Notice.

To PHILIP MAURO, Attorney and Counsel for Père Alfredo Luis Baglin, etc.

PLEASE TAKE NOTICE that upon the submission to the Supreme Court of your petition for Writ of Certiorari we shall submit the annexed answer, and brief.

Dated, New York, December 27, 1909.

ADOLPH L. PINCOFFS,
ROGER FOSTER,
Attorneys and of Counsel for
The Cusenier Company.

Service of the foregoing notice and annexed answer and brief is hereby admitted this day of December, 1909.

Supreme Court of the United States.

Answer.

PÈRE ALFRED LUIS BAGLIN, et al., *Petitioners,* *against* THE CUSENIER COMPANY, *Respondent.*	No. 291. October Calendar. 1909.

The answer of the Cusenier Company to the petiton herein respectfully shows as follows:

I. It admits the allegations contained in Nos. 1 and 2 of the petition herein. It alleges that the proceedings in the Circuit Court of Appeals, to which said petition refers, were decided upon a writ of error to review an order of the Circuit Court of the United States for the Southern District of New York, which punished this respondent for an alleged contempt by an alleged violation of an injunction, and as such punishment imposed a fine of $100, "one-half to the United States and one-half to complainants."

II. It admits that it took its appeal and likewise its writ of error from the said order to the United States Circuit Court of Appeals for the Second Circuit. And it alleges: that on the 11th day of October, 1909, a motion to dismiss that appeal was argued, together with a motion to prefer said case. That the Circuit Court of Appeals reserved its decision as to the motion to dismiss the appeal and advanced the case and ordered the same to be set down for argument on said writ of error. That subsequently, said writ of error was argued on the 8th day of November, 1909, and the decision was handed down herein in the terms following:

"We are satisfied it was error to hold de-
"fendant in contempt for translating the whole
"or any part of the label which the Court said
"it might use, the Court having expressly
"stated that such label might be translated
"into any language. No mistranslation is
"proved."

III. It denies the allegations contained in Nos. 5 and 6 of the petition herein, and alleges that the questions therein enumerated are in no way involved in such proceedings; that it is not alleged or claimed by petitioner that the label used by defendant, either in type, color or general arrangement has any similarity with petitioner's label; that it is not alleged by complainants that said defendant claims the right to use the words "Pères Chartreux" in virtue of the permission granted to it to use the word "Chartreuse" in the manner set out in the opinion and the labels suggested by the Court, that such right is claimed because defendant was expressly authorized to translate into any language the label suggested by the Court, because the words "Carthusian Monks" occur in such label and the words "Pères Chartreux" are a proper and correct translation of such words. Therefore, the only question involved in the proceedings sought to be reviewed by this application is one that is purely grammatical.

WHEREFORE, it prays that the petition for the additional Writ of Certiorari herein be denied.

THE CUSENIER COMPANY,
By
JULES AUBRY,
Vice-President,

ADOLPH L. PINCOFFS and
ROGER FOSTER,
Its Attorneys and Counsel.

Supreme Court of the United States.

PÈRE ALFRED LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for Himself and all of the other Members of said Order,

Petitioners,

against

THE CUSENIER COMPANY,

Respondent.

No. 291.
October Calendar. 1909.

BRIEF FOR RESPONDENT

In Opposition to Motion for Writ of Certiorari.

This is an application for a writ of *certiorari* to the Circuit Court of Appeals for the Second Circuit, requiring that the proceedings therein upon a writ of error in a contempt proceeding be certified to this Court, "and that the same may "be annexed to the main transcript hitherto certi- "fied to this Court," number 291 on the October Term, 1909.

The original cause, to which it is sought that the transcript of the contempt proceedings be annexed, is under a writ and cross-writ of *certiorari*, to review the decision of the Circuit Court of Appeals for the Second Circuit, modifying an injunction against the use of certain labels upon bottles of liqueur. The proceedings which it is now sought to review were instituted by the Circuit Court of Appeals subsequent to the previous writ and cross-writ of *certiorari*, to review an order of the Circuit Court of the United States for the

Southern District of New York, which punished this respondent for contempt in violating the previous injunction. The proceedings in the Circuit Court also were instituted subsequent to the writ and cross-writ of *certiorari*. The order punishing the defendant for contempt imposed a fine of $100, "one-half to the United States and one-half to the complainants."

I.

This is not an original, but an auxiliary proceeding.

It seeks to make an action of the Court in a subsequent independent criminal proceeding a part of a proceeding already pending in a civil suit. Such a confusion of the records of this Court should not be permitted. The proceedings in the Circuit Court of Appeals were reviewed by writ of error. They could only be reviewed by writ of error because the proceeding was criminal and not civil. The relief was granted under *Matter of Christensen Engineering Co.*, 194 U. S., 458, 461; where, as here, the order of the Circuit Court punished a defendant for disobeying an injunction, and he was "ordered to pay a fine of $1,000, "one-half to the United States and the other half "to the complainant." The Chief Justice of the United States said (at p. 401):

> "In the present case, however, the fine pay-
> "able to the United States was clearly puni-
> "tive and in vindication of the authority of
> "the Court, and, we think, as such it dominates
> "the proceedings and fixes its character."

And again, in *Doyle vs. London Guarantee Co.*, 204 U. S., 599, 604, Mr. Justice Day said:

> "It therefore appears that the only right
> "to review given to the Circuit Court of Ap-

"peals in contempt proceedings is derived "from the act giving that court such right "in criminal cases."

See also

Bessette vs. W. B. Conkey Co., 194 U. S., 324.

II.

Even if this were an original application and not auxiliary, the writs could not be granted.

The Court will not grant a writ of *certiorari* in a criminal case, except at the instance of the defendant.

U. S. vs. Dickinson, 213 U. S., 92.

A party, whose application to punish his opponent for contempt has been denied, cannot bring the proceeding to this Court for review.

Newport Light Co. vs. Newport, 151 U. S., 527.

The only way in which the decision of the Circuit Court of Appeals could be reviewed would be for alleged want of jurisdiction. This point has been foreclosed by the previous decisions of this Court, above cited. It could, moreover, only be taken by an application for the writ of *mandamus*.

See

Matter of Christensen Engineering Co., 194 U. S., 458.

III.

The proceeding sought to be reviewed in no way affects the merits of the controversy between the parties hereto.

The proceedings sought to be reviewed by this application in no way affect the questions whether the Circuit Court of Appeals properly modified the injunction granted below so as to allow the defendant to state the place of fabrication of its liqueur and the corporate name of the company making it. The rights of the parties can in no way be affected by the subsequent acts of the defendant. The decision of the Court of Appeals sought to be reviewed herein is a matter of record and can be referred to by the complainants on the argument without filing the record in this Court. Petitioners' object in asking for a writ of *certiorari* must be to ask the Court to pass on the merits of the question. The petitioner asks the Court to reverse the decision because the defendant has violated the injunction directed by the Circuit Court of Appeals, and, at the same time, it states that the respondent "in availing "itself of the permission so granted to it by said "Court of Appeals, is *inevitably* making use of "and unlawfully trading upon the good-will and "reputation personal to your petitioners." Even if the acts of the defendant in using the words "Pères Chartreux" were a violation of the rights of the complainants, yet, if they are the "inevitable" consequence of the permission granted to it, it might be argued that it was wrong to grant the permission, but it is difficult to see how an act which is the "inevitable" consequence of such permission, is at the same time a violation of it.

The words of the opinion of the Circuit Court of Appeals cited in the answer herein, clearly shows that none of the questions referred to by the petitioner are in reality involved herein. This Court will certainly not presume that the Circuit Court of Appeals did not know what it intended to decide. The only question involved is purely grammatical, namely: whether the words "Pères Chartreux" correspond with the words "Carthusian Monks~~, or Fathers (Pères Chartreux)~~".

In view of the fact that the decree which defendant is accused of violating, expressly adjudicated that the trademark in question is owned by the "Carthusian Monks or Fathers (Pères Chartreux)", the question is one as to which there can be little doubt.

ADOLPH L. PINCOFFS,
ROGER FOSTER,
Of counsel for Cusenier Company,
Respondent.

Telephone 7320 Cort. **The Weibeanhl Print** 146 Broadway N. Y.

Supreme Court of the United States

No. 99

October Term, 1910

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, for himself and all of the other Members of said Order

Petitioners and Cross-Respondents

vs.

THE CUSENIER COMPANY

Respondent and Cross-Petitioner

SUPPLEMENTAL BRIEF ON QUESTION OF CONTEMPT

A. L. PINCOFFS
ROGER FOSTER
Of Counsel for Defendant
and Cross-Petitioner

Telephone 980 Cort The Weibezahl Print 80 Broadway N. Y.

Supreme Court of the United States.

PERE ALFREDO LUIS BAGLIN, Superior General, etc.,

Petitioners and Cross-Respondents,

vs.

THE CUSENIER COMPANY,

Respondent and Cross Petitioner.

By permission of the court this brief is submitted on the question of the contempt proceedings which it is sought to bring before this court by supplemental writ of certiorari.

We have filed a brief opposing the granting of such writ. But in case the writ should be granted by the court we desire to submit the following considerations.

An order was made by Mr. Justice Hough punishing this defendant for contempt for violation of the final injunction entered herein and imposing a fine of one hundred dollars ($100.00), one-half to be paid to the United States and one-half to the complainant. A writ of error to review such decision was granted. An appeal was also taken from the order and a motion to dismiss that appeal was made and argued on the 11th day of October, 1909, at which time a motion for a preference was also made. The Court granted the motion for the preference and set the case down as a preferred cause for the November Term and stated that the motion to dismiss the appeal would then be disposed of.

The order of the Circuit was reversed by the Circuit Court of Appeals on the ground that we had done only what we were expressly authorized to do and that no mistranslation had be proved.

The circumstances leading up to this proceeding are, briefly stated, as follows: In the opinion delivered by the Circuit Court of Appeals in deciding the appeal herein, it is stated that defendant could use certain labels suggested by it and set out in the opinion. In the labels so suggested the complainants were described as the "Carthusian Monks." The Court stated expressly that defendant was at liberty to use any language it might deem proper and also stated that it did not intend to restrict the defendant to the use of the labels so indicated.

The defendant adopted a label which it claims was in all respects completely in accord with the suggestions of the Court. It described the liqueur sold by it by the words in French "Cette Liqueur est Fabriquee a la Grande Chartreuse par la Compagnie Fermiere de la Grande Chartreuse" and then added in English "Made in France by the Cie. Fermiere de la Grande Chartreuse, Successor to the Liquidator of the Property of the Peres Chartreux."

As stated by Mr. Scott in his affidavit, defendant's counsel was requested to discontinue the use of these labels in so far as they described Mr. Lecouturier as Liquidator of the Property of the "Peres Chartreux." When defendant's counsel refused, substantially on the grounds which were afterwards set out in his replying affidavit herein, an order to show cause herein was served on him ordering the defendant to show cause why it should not be enjoined "from using the words Peres Chartreux or any synonymous expression in connection with any liqueur or cordial not made by the Carthusian Monks."

The order to show cause was granted on an affidavit in which it was alleged that defendant had not spoken the truth about its wares, as both parties were ordered to do by this Court, when it described Mr. Lecouturier as Liquidator of the property of the "Peres Chartreux;" that it should have used the words "Congregation of the Chartreux" or "Order of the Chartreux" or "Carthusian Monks;" that the words "Peres Chartreux" were not a correct translation of the words "Carthusian Monks" because the Carthusian Monks consist of two classes, the Fathers and the Brothers. It was also charged that the object of the defendant was to trade on the reputation of the complainants who had adopted a label in which they stated that the liqueur made by them was made by the "Peres Chartreux" (presumably in pursuance of the injunction of the Court that both parties tell the truth about their wares.)

It was admitted that, except for these two words, the label adopted was in compliance with the label suggested by the Court.

It will be noted that the label used by the defendant was not annexed to the affidavit, that there is no charge made that by color, form or arrangement it in any way resembles the old label, which was litigated in this suit, or the new label subsequently adopted by the complainants. Nor is it in any way alleged that the words "Peres Chartreux" are given any undue prominence. In fact, from the form of label as printed in the moving affidavit (on page 6 of the record), it appears that the words indicating that the liqueur is made by the Compagnie Fermiere in France, are given much more prominence than the rest of the label and that

the words "Peres Chartreux" are much less prominent than the words "Carthusian Monks" on the label suggested by the Court.

A bottle bearing the label in question has been handed up to this Court.

It is apparent that the idea, that there was any violation of the injunction herein was entirely absent from the minds of the complainants at the time they made this application, otherwise they certainly would not have resorted to the remarkable procedure of asking the Court to vary a final decree by an injunction granted on affidavit. On the argument, Judge Hough took the view that no injunction as prayed for could be granted, but treated this application for a new injunction as a motion to punish for a violation of the old injunction. The order now before the Court is the result.

POINTS.

I.

The use of the words "Peres Chartreaux" did not constitute or suggest a falsehood, and the claim that any customer could be deceived by it is contrary to the theory on which the injunction herein was granted.

Mr. Justice Hough stated in his decision that the description of Mr. Lecouturier was, perhaps, not strictly correct, but that it was a "verbal inaccuracy of small moment." It is difficult to see how he could have decided otherwise as the Circuit Court of Appeals did not use the expression "Congregation of the Chartreux" but used instead the words "Carthusian Monks," in the form of label suggested by it.

He also found that "Peres Chartreux" is a fair equivalent of "Carthusian Monks;" (see opinion, fol. 44); yet he found that in using the words "Peres Chartreux" we have stated or suggested a falsehood. His opinion is based on the fact that we have mixed up French and English and that we might as well have used the words "Carthusian Monks" as the words "Peres Chartreux."

It is respectfully submitted that we were given the permission to translate the label suggested by this Court into any language. If it is true, as stated by Judge Hough, that our translation of the words "Peres Chartreux" is correct, who is injured, or what indication of fraud can be found from the fact that the rest of the passage in question was not also translated? What person can be deceived by the use of the label as printed at present, who would not have been deceived if the whole had been translated into French as we had the right to do?

Judge Hough claims that these words were used with a sinister motive. He says that we used them (fol. 45):

> "Evidently because the ordinary customer is accustomed to the words 'Peres Chartreux' on his bottle; he knows no French, but he looks for these words, and if he does not find them he is disquieted—even though he finds the familiar 'Chartreuse' twice repeated."

We ask again, would the ordinary customer "who does not understand French" be less liable to be deceived if we had translated the whole label into French, instead of stating in plain English that the liqueur is made in France by the Compagnie Fermiere?

But apart from this, it is respectfully submited that the assumption of facts, made here in order to find a basis to punish the defendant for contempt, is entirely inconsistent with the whole theory on which the relief in this action was granted. In its bill, complainant alleges that by the use of the old label by the defendant, the public was deceived. The Court will remember that a mass of testimony was introduced by the complainant to prove that it was generally believed that the old labels on which the word "Chartreuse" appears, still indicated to the public that the contents were the product of the Monks. The Court below in its opinion said that the proof of deception was unsatisfactory, but that, while it was more a matter of inference than proof, it might be that the public still believed the old labels to represent the goods manufactured by the complainants. It was on that ground that the injunction was granted. What would have been the result if the complainants had introduced proof that the use of the word "Chartreuse" in no way indicated to the public that the goods were made by the Monks, but that the ordinary customer is now so accustomed to the words "Peres Chartreux," that he is disquieted by its absence even if the word "Chartreuse" appears on the label? Would not this evidence have destroyed the possibility of drawing the inference which the Court drew in its opinion and which was an essential element of its decision? Yet this assumed state of facts, which, if proved, would have completely destroyed complainant's case, is now made the basis of punishing us for contempt for violating a decree which is based on a totally different state of facts.

II.

If there is any infringement of any rights of the complainant derived from its new label, such right should be enforced by an independent suit.

It is not pointed out what provision of the decree we violated. There is no claim made that we have used the word "Chartreuse" in a way not authorized by the Court. If it is said that we have attempted to make use of the good-will and reputation of the complainants in putting out any liqueur or cordial not made by complainants, the answer to this contention is that the good-will herein referred to is, of course, the good-will gained by the use of the trade-mark which was at issue in this litigation, namely, the word symbol "Chartreuse," accompanied by the signs and labels formerly used by complainants. It certainly cannot refer to the good-will obtained by the use of the new trade-mark, which was in no way at issue in this litigation and as to the validity of which no decision whatever has been made.

Where an injunction is based on the infringement of a particular label, it will not be construed as referring to future infringements of entirely different labels not at issue in this suit. As a new label is adopted by the complainant in the former suit, it should try out the question whether or not the defendant is guilty of an infringement by resorting to a suit in equity, where the defendant has a right to cross-examine the witnesses produced by the complainant. It cannot try that question by an application to punish for contempt based on affidavits.

III.

The moving papers do not show any infringement in violation of complainant's rights.

But if it were conceded that in a proper case, such relief could be obtained, it certainly is true that in order to entitle the complainant to an order punishing the defendant for contempt, it must make out a case which, if the suit were an original one, would entitle him to an injunction. Can it be claimed for a moment that if an injunction were asked for, on the case made by the complainant, such an injunction would be granted? The question, as stated in the replying affidavit, was not entirely new to the Circuit Court of Appeals. We quote from the replying affidavit herein:

> "When this decision was handed down, the counsel for the complainants addressed a communication to the Circuit Court of Appeals, asking it to modify its opinion and decision, and objecting particularly to the use of the words 'Carthusian Monks,' at the bottom of the label, stating particularly that owing to the use of such words 'an ordinary purchaser, if not thoroughly versed in the events resulting from the French Association Act, would quite naturally suppose defendant's product to be in some way connected with the Carthusian Monks." That in answer to this letter, a communication was addressed to complainant's Counsel by Hon. Alfred C. Coxe, refusing to modify the opinion and the decree, and stating that 'we think that no one can be deceived by either label suggested by us unless his mental powers have been hopelessly impaired."

Would not the same words apply with even greater force if this were the first time that the respective claims of these parties were before

the Court and an application was made on the papers now before the Court to enjoin the defendant from using the words "Peres Chartreux" in the manner adopted by it? It is prominently and clearly stated on the label by whom and where the liqueur is made, no charge of any similarity in type, color or arrangement is alleged to exist. Could any sane human being, on reading this label, which states that the article is made in France by the Compagnie Fermiere, possibly imagine that it was made in Tarragona by the Peres Chartreux?

IV.

The complainants are estopped from claiming that "Peres Chartreux" is not a correct translation of "Carthusian Monks."

It is not only true, as stated by Judge Hough, that the words "Peres Chartreux" are a fair equivalent of the words "Carthusian Monks" but it has been stated repeatedly and sworn to by the complainant, who, of course, must be presumed to obey the injunction of the Court to tell the truth, that "Peres Chartreux" is the proper and usual name for their order. During all this litigation, it has never entered their minds to claim that the fact that the Order in reality consists of two classes, makes the use of the words "Peres Chartreux" to designate such order improper or incorrect.

Some time after the Order left France and had gone to Tarragona to manufacture their liqueur, it issued a circular (fol. 1386) of which a translation as printed there, is: "The Peres

Chartreux is dispossessed in France of their former trade-marks, sold at auction, have carried away their secret and manufacture at Tarragone."

They base their whole case on the fact that the Order of the Carthusian Monks have continued to make the same liqueur at Tarragona, and when they want to make that fact clear to the public they state that their liqueur "is made in Tarragona by the Peres Chartreux." (See new label on page 1297). When their agent in America wants to introduce their liqueurs to the public, he states (see fol. 1292 of Record), that the Carthusian Monks (Peres Chartreux) have located at Tarragona and that now it is necessary "under the nw conditions to name this liqueur Peres Chartreux after the Order of Monks owning the secret process employed in its manufacture."

They have, themselves, put in evidence the judgment of the French Court, allowing them to sell their liqueur in France with their new label, on the ground that their name is "Peres Chartreux" and that such words are entirely distinct from the word "Chartreuse."

As is stated in the replying affidavit herein in this very case, they have sworn in their complaint that the Order of Carthusian Monks is commonly kown as "Peres Chartreux;" in their bill of complaint, they have used the words "Order of Peres Chartreux" and "Order of Carthusian Monks" as interchangeable terms, and finally in the decree which was signed by the Court, and presumably prepared by them, they have expressly asked the Court to adjudicate that the trademark in question belongs to the "*said complainants, the Carthusian Monks or Fathers (Peres Chartreux)*". (Record, p. 1567, fol. 2161-2162.)

We respectfully suggest that it does not lie in the mouth of these complainants, under these circumstances, to insist that we have not the right to describe them in the same terms which they are known, and under which they are described in this very decree.

In its opinion the Circuit Court of Appeals states (164 Fed. Rep., 25, 30), that the label used by the complainants does not contain a misstatement. That label described them as *"Peres Chartreux."* If this description is correct, it is correct, no matter by whom it is used. We cannot be held to have stated an untruth, or to have violated the injunction, because we used the term thus expressly approved by the Court.

Respectfully submitted,

A. L. PINCOFFS,
ROGER FOSTER.

Of Counsel for Defendant and Cross-Petitioner.

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99.

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United States Circuit Court of Appeals

FOR THE SECOND CIRCUIT

PERE ALFREDO LUIS BAGLIN, SUPERIOR-GENERAL, ETC.
Complainant-Appellee and
Defendant in Error

vs.

THE CUSENIER COMPANY
Defendant-Appellant and
Plaintiff in Error

TRANSCRIPT OF RECORD

ERROR TO AND APPEAL FROM CIRCUIT COURT OF THE UNITED STATES
THE SOUTHERN DISTRICT OF NEW YORK

PRINTED UNDER THE DIRECTION OF THE CLERK

INDEX.

United States of America, ss: 1

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK, GREETING:

BECAUSE, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the Circuit Court, before you, or some of you, between PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, etc., and CUSENIER COMPANY, a manifest error hath happened, to the great damage of the said CUSENIER COMPANY as is said and appears by its complaint. 2
WE, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, DO COMMAND YOU, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Judges of the United States Circuit Court of Appeals for the Second Circuit, at the City of New York, together with this writ, so that you have the same at the said place, before the Judges aforesaid, on the 22nd day of September, 1909, that the record and proceedings aforesaid being 3
inspected, the said Judges of the United States Circuit Court of Appeals for the Second Circuit, may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

WITNESS, the Honorable MELVILLE W. FULLER, Chief Justice of the Supreme Court of the United States, this 25th day of August, in the year of our Lord one thousand nine hundred and nine and of the Independence of the United States the one hundred and thirty-third.

JOHN A. SHIELDS,
Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit.

[SEAL.]

The foregoing writ is hereby allowed.

C. M. HOUGH,
U. S. Dist. Judge.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

I, JOHN A. SHIELDS, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, by virtue of the foregoing Writ of Error, and in obedience thereto, do hereby certify, that the following pages numbered from 3 to 29 inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the cause of CUSENIER COMPANY, Plaintiff in Error, against PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, etc., Defendant in Error, as the same remain of record and on file in said office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 6th day of October, in the year of our Lord one thousand nine hundred and nine and of the Inde-

pendence of the United States the one hundred and thirty-fourth. 7

JOHN A. SHIELDS,

[SEAL.]

Clerk.

(Endorsed)—The U. S. Circuit Court of Appeals for the Second Circuit.—Cusenier Company, Plaintiff in Error, *vs.* Pere Alfredo Luis Baglin, Superior-General of the Order of Carthusian Monks, etc., Defendant in Error.—Writ of Error.—A. L. Pincoffs, of Counsel for Plaintiff in Error.—Due service of a copy of the within Writ of Error is hereby admitted this 27th day of August, 1909. C. A. L. Massie, 8 Attorney for Defendant in Error.—U. S. Circuit Court, Southern District, N. Y.—Filed Aug. 28, 1909.—John A. Shields, Clerk.

10 At a Stated Term of the United States Circuit Court for the Southern District of New York, held in the Court rooms thereof in the Federal Building, Borough of Manhattan, City of New York, this 29th day of July, 1909.

Present—Hon. HENRY G. WARD,
U. S. Circuit Judge.

PERE ALFREDO LUIS BAGLIN, 11 Superior General of the Order of Carthusian Monks, etc., vs. CUSENIER COMPANY.	In Equity No. 8949.

Order to Show Cause.

This cause coming on to be heard on the annexed Scott affidavit (verified herein July 29, 1909), it is this day

12 ORDERED that the defendant show cause before his Honor Judge HOUGH at the next ensuing motion day of this Court to be held in the Court rooms, Federal Building, Friday, August 13, 1909, why the defendant, its associates, etc., should not be enjoined from using the words "PERES CHARTREUX" or any synonymous expression, in connection with any liqueur or cordial not made by the Carthusian Monks; and it is further

ORDERED that this order may be served on counsel for defendant at any time prior to or on the

2nd day of August, 1909, and that the defendant 13
serve on counsel for complainants its reply papers, if any, on or before 12 o'clock noon of Wednesday, August 11, 1909.

(Signed) H. G. WARD,
U. S. Circuit Judge.

IN THE

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK. 14

PERE ALFREDO LUIS BAGLIN, Superior General of the Order of Carthusian Monks, etc., vs. CUSENIER COMPANY.	In Equity No. 8949.

Scott Affidavit.

15

STATE OF NEW YORK, } ss.:
County of New York, }

RALPH L. SCOTT, being duly sworn, deposes and says: I am of counsel for the complainants in this cause and am familiar with the transcript of record herein and all proceedings so far had. The opinion of the Court of Appeals (164 Fed. Rep., 25), says, page 30:

> "The common sense solution of the "problem, it seems to us, is to compel both "parties to tell the truth about their goods."

And on page 31, of the reported opinion, the Court of Appeals suggests two forms of label which the defendant may use.

Within the last few days it has come to my notice that defendant is putting out its liqueur in bottles bearing a label which instead of following the spirit of the opinion of the Court of Appeals and the phraseology recommended by the Court of Appeals, is in violation of that spirit and is an appropriation of the principal words of the new label of complainants, viz.: "PERES CHARTREUX."

I set forth below, the wording of the defendant's present label, which appears on the right. At the left appears the label suggested by the Court of Appeals which is the more nearly followed by the defendant.

LIQUEUR made at the GRANDE CHARTREUSE by the COMPAGNIE FERMIERE successor to M. LECOUTURIER, LIQUIDATOR of the property of the CARTHUSIAN MONKS.	CETTE LIQUEUR EST FABRIQUEE a la GRANDE CHARTREUSE par la COMPAGNIE FERMIERE de la GRANDE CHARTREUSE MADE IN FRANCE by the Cie. Fermiere de la Grande Chartreuse Successor to the Liquidator of the Property of the Peres Chartreux.

The label used by the defendant follows substantially the label suggested by the Court of Appeals, with the exception of the last two words. The Court of Appeals uses the expression "Carthusian Monks,"—the defendant uses the expression "Peres Chartreux."

All through the record of this cause and in certified copies of opinions by the French tribunals, which were put in evidence, it appears that Lacou-

turier was appointed liquidator of the property of 19
the "Carthusian Monks," or liquidator of the property of the "Congregation of the Chartreux," or liquidator of the property of the "Order of the Chartreux." In fact, as appears by Defendant's Exhibit Judgment of the Civil Tribunal of Grenoble, France, under date of March 31, 1903, the Procureur of the Republic of France presented to the Tribunal a petition to have Lecouturier named as Liquidator of the property of the "Congregation of the Chartreux"; and in the judgment of the Tribunal (p. 1505 of the Transcript of Record) appears the following:

> "The Court named Mons. Henri Lecou- 20
> turier judicial administrator of the Tribunal of the Seine, sequestrating administrator and liquidator of the properties of the so-called 'Congregation of the Chartreux.'"

Defendants' Exhibit No. 22, "Extract from the Records of the Court of Cassation" (Transcript, p. 1411), contains the following:

> "Mr. Henri Lecouturier, judicial administrator of the Civil Tribunal of the Seine, residing at 28 rue du Mont-Thabor, Paris, in his capacity of judicial liquidator and ad- 21
> ministrator-Receiver of the dissolved 'Congregation of Carthusian Monks.'"

Defendant's Exhibit, Defendant's Proposed Circular, (transcript, p. 1413), under date of July 6, 1907, contains the following:

> "After the congregation of Carthusian Monks was dissolved the French Government put this property * * * in the hands of a Receiver or Liquidator, Mr. Henri Lecouturier." * * *

22 The foregoing quotations might be multiplied many times to show that the liquidator was *not* appointed to take charge of the property of the "Peres Chartreux,"—and the Transcript of Record herein does not show a single instance where the defendant has even so contended; on the other hand, it everywhere appears by the Transcript that Lecouturier was appointed liquidator of the property of the *Order* of the *Congregation*,—which is the same thing.

Defendant's new label does *not* tell the truth (as required by the Court of Appeals), nor does it follow the label suggested by the Court of Appeals,
23 —because it uses the expression "Peres Chartreux" instead of "Carthusian Monks." The "Carthusian Monks," "Order of the Chartreux" and "Congregation of the Chartreux" are all synonymous expressions and, as such, are of course interchangeable. The Order, or Congregation, is composed of two distinct classes of men,—"les peres et les Freres" (the Fathers and the Brothers); the Fathers (les Peres) are those in authority, while the Brothers (les Freres), are those members of the Order who have not attained to the rank of Fathers, and are those who do the manual labor, etc.

After the Carthusian Monks were expelled from
24 France, and set up their establishment at Tarragona, they adopted a new label (which has since gained great notoriety and favor), the prominent words thereon being "Peres Chartreux." This new label was put in evidence in this case by the defendant ("Defendant's Exhibit, Complainants' Label," Transcript, p. 1297), and its principal wording is as follows:

LIQUEUR

FABRIQUEE a TARRAGONE

par les

PERES CHARTREUX

The use of these words,—"Peres Chartreux,"—on the new label of the defendant is additional evi-

dence of the defendant's attempt to trade on the 25
reputation and good-will of the complainants, it affords the dealers of defendant an additional opportunity to dispose of defendant's liqueur as and for the liqueur of the Monks; and for these reasons, as well as those set forth above, the defendant should *not* be permitted to use the expression "Peres Chartreux" or any synonymous expression.

Immediately after it came to my attention that defendant was putting out its liqueur in bottles bearing the label above complained of, I wrote to A. L. Pincoffs, Esq., of counsel for defendant, stating complainants' objection to the use of the words "Peres Chartreux" on the label of the defendant, 26
and giving our reasons for such objections, and requested that he instruct his client to discontinue forthwith the use of such expression. Mr. Pincoffs replied, under date of July 23, 1909, declining to do so, his letter concluding as follows:

> "After my clients submitted the label in its present form to me it never entered my mind that any objection would be made to it, or that it did not conform to the provisions of the injunction, and I do not feel at liberty, now that the label has been printed and in actual use, to advise them to change the same." 27

I offer to produce in Court my correspondence with Mr. Pincoffs.

RALPH L. SCOTT.

Subscribed and sworn to before me
this 29th day of July, 1909.

WILLIAM E. HILLS,
[SEAL.] Notary Public,
New York County.

Due and timely service of the foregoing Order to Show Cause, Scott Affidavit, and proposed order, is hereby admitted this 2nd day of August, 1909.

A. L. PINCOFFS,
Of Counsel for Defendant.

(Endorsed)—U. S. Circuit Court, Southern District of N. Y.—Filed Aug. 14, 1909.—John A. Shields, Clerk.

IN THE

CIRCUIT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

PERE ALFREDO LUIS BAGLIN, Superior-General of the Order of Carthusian Monks, etc., Complainant. AGAINST CUSENIER COMPANY, Defendant.	In Equity, No. 8949.

STATE OF NEW YORK, County of New York, } ss.:

ADOLPH L. PINCOFFS, being duly sworn, deposes and says: I am of counsel for the defendant in this cause, and am familiar with the transcript of record herein and all proceedings so far had; that on the 26th day of November, 1907, final judgment was entered herein, enjoining the defendant, as

therein stated; that an appeal was taken by the 31
defendant from said decision to the Circuit Court
of Appeals, and such injunction was modified, as
stated in the opinion handed down by the Circuit
Court of Appeals on such appeal, and was other-
wise affirmed. That subsequently the mandate of
the Circuit Court of Appeals was filed in this Court,
and an order was entered herein on the 1st day of
November, 1908, making the judgment of the Cir-
cuit Court of Appeals the judgment of this Court,
and ordering and decreeing that a writ of perpetual
injunction issue in conformity with the decree as
above modified, and that the issuance of the said
new decree or writ of injunction should operate to 32
vacate the one originally issued; that the said final
injunction was issued and served; that an appeal
was taken by the complainant from said decision
of the Circuit Court of Appeals to the Supreme
Court of the United States, and that a motion was
made to dismiss said appeal. That complainant
thereupon made and filed his petition for a writ of
certiorari, and that a cross-petition for a writ of
certiorari was filed by the defendant. That all
these various motions came on to be heard together
before the Supreme Court, and that on the nine-
teenth day of April, 1909, an order was made herein
by the Supreme Court of the United States, grant- 33
ing the petition for the writ of certiorari and the
cross-petition, and ordering that the record filed in
said court on the appeal should be taken as a re-
turn to the said writs.

That deponent respectfully states that in vir-
tue of all these proceedings, this Court has no
jurisdiction to make any order in the premises, ex-
cept for the purpose of enforcing the decree here-
inbefore made by proper contempt proceedings, in
case of violation thereof by the defendant.

That this application is for the purpose of ob-
taining an entirely different relief not asked for

in the original bill; that it is based on the assumption that the use of the words "Peres Chartreux" would be apt to make the public believe that the goods sold by the defendant are the goods which are now manufactured by the complainants in their factory in Tarragona, under their new label; that the bill on the other hand is based on an alleged attempt by the defendant to have its goods passed for the goods formerly manufactured by the defendant in France under the old label; that either the use of the word sought to be enjoined in this application is embraced within the decree as entered, and that in that case the proper remedy would be an application to punish for contempt, or that it is not embraced within it, and that in that case a new bill should be filed, under which testimony could be taken, and the matter could be decided according to the usual and proper practice in equity.

That as far as the merits of the application are concerned, deponent wishes to bring to the attention of the Court that in the decision of the Circuit Court of Appeals it was expressly stated that the Court did not wish in any way to limit the defendant to the use of the labels suggested by the Court, and that it was further stated that defendant would have the right to use the labels suggested by the Court in any language it might deem proper. When this decision was handed down, the counsel for the complainants addressed a communication to the Circuit Court of Appeals, asking it to modify its opinion and decision, and objecting particularly to the use of the words "Carthusian Monks," at the bottom of the label, stating particularly that owing to the use of such words "an ordinary purchaser, if not thoroughly versed in the events resulting from the French Association Act, would quite naturally suppose defendant's product to be in some way connected with the 'Carthusian Monks.'"

That in answer to this letter a communication was addressed to complainant's counsel by Hon. Alfred C. Coxe, refusing to modify the opinion and the decree, and stating that "we think that no one can be deceived by either label suggested by us, unless his mental powers have been hopelessly impaired." That in such letter of counsel it was never suggested that the use of the words "Liquidator of the property of the Carthusian Monks" was an improper description of the position held by Mr. Lecouturier, and that he should be described as "Liquidator of the property of the Congregation of the Chartreux." That an inspection of the record will show that no distinction was made between these terms by the witnesses, and it is admitted in the Scott affidavit that such terms are practically synonymous, and the only objection is that use is made of the term "Peres Chartreux," instead of "Carthusian Monks." That an inspection of the record will show that by all the witnesses of the complainants, and amongst others the Prior of the complainants himself, the words "Carthusian Monks" and "Carthusian Fathers" are used indiscriminately. 37 38

Deponent particularly calls the attention of the Court to the testimony of Mr. Dubonnet and of Father Baglin (page 168). It is difficult to see how the complainants herein can raise this point when in their own bill (paragraph I) they describe the complainants as "said Order of Carthusian Monks of the Convent La Grande Chartreuse, generally known as Peres Chartreux (Chartreuse Fathers)," when they further speak of the "skill and care exercised by the said Peres Chartreux," when in the second paragraph they speak of the "Order of Carthusian Monks, known as *Peres Chartreux*," and when in the third paragraph they speak of the "Order of Peres Chartreux," an expression reiterated in the seventh paragraph. If "Or- 39

40 der of Carthusian Monks" is equal to "Order of Peres Chartreux," then "Carthusian Monks" is equal to "Peres Chartreux." This is not a legal, but simply a mathematical proposition.

Deponent called the attention of Mr. Scott to these facts in the correspondence referred to in the Scott affidavit, and stated that for that reason he did not feel at liberty to advise his clients to change the form of the label. At that time deponent had not noticed that the form of the decree entered herein was an additional argument to sustain the views herein expressed. In that decree and in the injunction which was entered, this Court adjudi-
41 cates that the ownership of the trade-mark "Chartreuse" is in the complainants, and describes the complainants as "Carthusian Monks or Fathers (Peres Chartreux)."

This is a clear adjudication that the words "Carthusian Monks" and "Peres Chartreux" are synonymous, and therefore, if the relief prayed for in this application should be granted, and defendant should be enjoined from using the word "Peres Chartreux," or any "synonymous expression," it could not use the words "Carthusian Monks," notwithstanding that it has been given expressly the right to use these words by the Circuit Court of
42 Appeals. An application which would lead logically to such an absurd result cannot be seriously considered.

A. L. PINCOFFS.

Sworn to, before me, this 11th day of August, 1909.

E. M. CARROLL,
[SEAL] Notary Public,
New York County.

(Endorsed)—Copy received 8/11/09. Ralph L. Scott, of Counsel for Complt.—U. S. Circuit Court, Southern District N. Y.—Filed Aug. 11, 1909.—John A. Shields, Clerk.

Opinion of the Court.

The defendants have varied the suggestion of the Circuit Court of Appeals. This was their right. The material inquiry is whether they have violated the decree on mandate, which is the original decree excepting as to Paragraph IV.

A fair interpretation of the decree is that defendants may tell what they make, providing they tell the truth about it on their labels, etc.

Are they telling the truth when they speak of the "Liquidator of the PERES CHARTREUX." In my opinion they are not strictly accurate, as matter of law, on the evidence of the French witnesses.

M. Lecouturier was not such Liquidator—but was entrusted with the property of the Congregation or Order, of which the Fathers were the religious portion only.

This verbal inaccuracy seems to me, however, of small moment. The true question is does the label assert or suggest a falsehood. I think it does. Why should French and English be mingled in the part complained of? Why cannot the words "Carthusian Monks" (a fair English equivalent for Peres Chartreux) be used?

Evidently because the ordinary customer is accustomed to the words "Peres Chartreux" on his bottle; he knows no French, but he looks for these words, and if he does not find them he is disquieted—even though he finds the more familiar "Chartreuse" twice repeated.

The form of the motion is objectionable. There is power to punish for contempt in this Court, but not to vary or add to a decree now on appeal to the United States Supreme Court.

An order may be entered on these papers adjudging that defendant is in contempt and fining it $100.00, one-half to use of complainant and one-half to use of U. S.

46 This will enable defendant to submit the matter to the Circuit Court of Appeals.

C. M. HOUGH.

Aug. 14, 1909.

At a Stated Term of the United States Circuit Court for the Southern District of New York, held in the Court Rooms thereof in the Post Office Building, Borough of Manhattan, City of New York, this 21st day of August, 1909.

47

Present—Hon. CHARLES M. HOUGH,
U. S. Judge.

DERE ALFREDO LUIS BAGLIN, etc.,

vs.

CUSENIER COMPANY.

48 This cause coming on further to be heard upon the Scott Affidavit (verified herein July 29, 1909), and the Pincoffs affidavit (verified herein August 11, 1909), and R. L. Scott, Esq., being heard for complainants, and A. L. Pincoffs, Esq., for defendant, and the Court being advised in the premises, and on August 14, 1909, having handed down a written decision, now, on motion of complainants' counsel and in pursuance of said decision, it is this day ordered as follows:

1. Defendant has been guilty of violation of the injunction in making use, upon liqueur or cordial not manufactured by complainants, of the label re-

ferred to in the said Scott affidavit, by reason of the 49
use of the words "Made in France by the Cie. Fermiere de la Grande Chartreuse Successor to the Liquidator of the Property of the Peres Chartreux."

2. Defendants is fined One Hundred Dollars ($100.00) for said contempt, for such violation of the injunction, one-half to the United States and one-half to complainants, the same to be paid within ten days from the date of said decision, to wit, on or before August 24, 1909; and if not paid within that time let execution issue therefor.

50

3. If within said time defendant takes its appeal from this order, and if defendant at the same time file a bond of good and sufficient surety for the payment of said fine and the costs of appeal, and if defendant diligently prosecute its said appeal and promptly move for a preference,—in such event the payment of said fine will be suspended until decision by the Court of Appeals upon such appeal, and the entry of an order thereon.

C. M. HOUGH,
U. S. Judge.

(Endorsed)—Due and timely service of a copy of 51
the within order is hereby admitted this 16th day of Aug., 1909. A. J. Pincoffs.—U. S. Circuit Court, Southern District N. Y.—Filed Aug. 23, 1909.—John A. Shields, Clerk.

52 IN THE

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

BAGLIN vs. CUSENIER.	In Equity No. 8949.

53

Petition for Appeal.

The above named defendant conceiving itself aggrieved by the order entered on the 23rd day of August, 1909, in the above entitled cause, does hereby appeal from said order to the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the Assignment of Errors, which is filed herewith and said defendant prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated may be sent to the United States Circuit
54 Court of Appeals for the Second Circuit.

Dated, New York, August 23rd, 1909.

A. L. PINCOFFS,
Of Counsel for Defendant.

The foregoing claim of appeal is allowed.

C. M. HOUGH,
District Judge.

(Endorsed)—Due personal service of a copy of the within petition for appeal is hereby acknowledged on behalf of the appellee, Pere Baglin,

for himself and the other members of the Order, this 27th day of August, 1909, C. A. L. Massie, of Counsel for Baglin, *et al.*, Complts.-Appellees.—U. S. Circuit Court, Southern District, N. Y.—Filed Aug. 24, 1909.—John A. Shields, Clerk. 55

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

56

CUSENIER,
Plaintiff in Error,

vs.

BAGLIN,
Defendant in Error.

Assignment of Errors.

And now comes said Plaintiff in Error by Adolph L. Pincoffs, of counsel, and having obtained a writ of error to the United States Circuit Court of Appeals for the Second Circuit from the order of said Circuit Court entered on the 23rd day of August, 1909, adjudging the plaintiff in error in contempt and imposing a fine upon it, respectfully represents as an assignment of errors herein that said Circuit Court has erred in the following particulars: 57

1. In not denying the motion for an injunction and refusing to punish plaintiff in error for a contempt when no such relief was asked for or suggested in the moving papers.

58 2. In holding that the use of the words "Peres Chartreux" by plaintiff in error on the label used on liqueur not manufactured by the defendants set out in defendant's moving papers herein, was in itself, a violation of the injunction issued herein on the first day of November, 1908.

3. In holding that the use of such words constituted or asserted or suggested a falsehood or would mislead a purchaser.

4. In not holding that the use of such words was not, in itself, a violation of such injunction and did not constitute or assert or suggest a falsehood, or
59 would not mislead a purchaser.

5. In not holding that the use of such words in such a manner is expressly authorized by the Mandate of the Circuit Court of Appeals herein.

6. In fining the plaintiff in error for such alleged contempt.

WHEREFORE, the plaintiff in error prays that said order may be reversed.

A. L. PINCOFFS,
Of Counsel for Plaintiff in Error.

60 August 25th, 1909.

(Endorsed)—U. S. Circuit Court, Southern District N. Y.—Filed Aug. 27, 1909.—John A. Shields, Clerk.

NOTE.—A similar assignment of errors was filed in connection with the appeal on the 24th day of August, 1909.

UNITED STATES CIRCUIT COURT OF APPEALS, 61

FOR THE SECOND CIRCUIT.

CUSENIER COMPANY,
Plaintiff in Error,

AGAINST

PERE ALFREDO LUIS BAGLIN,
etc.,
Defendant in Error. 62

KNOW ALL MEN BY THESE PRESENTS: That we, Cusenier Company, as principal, and the Illinois Surety Company, a corporation organized and existing under the Laws of the State of Illinois, and having an office at 5 Nassau Street, in the Borough of Manhattan, City of New York, as surety, are held and firmly bound unto Pere Alfredo Luis Baglin, Superior General of the Order of Carthusian Monks, for himself, and all of the other Members of said order, in the sum of Three Hundred Fifty Dollars ($350.) for the payment of 63 which well and truly to be made we bind ourselves, our successors and assigns, firmly by these presents.

SEALED with our seals and dated this 27th day of August, 1909.

WHEREAS, the above-named Cusenier Company has obtained a writ of error to the United States Circuit Court of Appeals for the Second Circuit to reverse an order made in the above-entitled suit by a Judge of the Circuit Court of the United

64 States for the Southern District of New York, imposing a fine of One Hundred Dollars ($100.00) for a violation of an injunction issued in the above-entitled suit.

NOW, THEREFORE, the condition of this obligation is such that if the above-named Cusenier Company shall prosecute the said writ of error to effect and answer all damages and costs and payment of the aforesaid fine if it fails to make its plea good, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

CUSENIER COMPANY,
By J. E. R. KUNZMAN,
65 Res. Vice President.

ILLINOIS SURETY COMPANY,
[SEAL.] By WIGHT V. ABBOTT,
Attorney in Fact.

CITY AND COUNTY OF NEW YORK, }
State of New York, } ss.:

On the 27th day of August, 1909, before me personally came WIGHT V. ABBOTT, to me known, who, being duly sworn, did depose and say that he resides in the City of New York; that he is an attorney-in-fact of the Illinois Surety Company, the corporation described in and which exe-
66 cuted the within instrument; that he knew the seal of said corporation; that the seal attached to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said Company; and that he signed his name thereto by like order; and that the liabilities of said Company do not exceed its assets, as ascertained in the manner provided by law.

SWORN to before me the day and year first above written.

JOSEPH E. R. KUNZMANN,
Commissioner of Deeds for the City of New York, residing in the Borough of Brooklyn.

[SEAL.]

POWER OF ATTORNEY FROM ILLINOIS SURETY COMPANY TO D. CLINTON MACKEY AND WIGHT V. ABBOTT, OR EITHER OF THEM. 67

KNOW ALL MEN BY THESE PRESENTS: That the Illinois Surety Company, a corporation duly incorporated under the laws of the State of Illinois, and duly authorized to act as sole surety, in pursuance of the following resolution, which was passed by the Board of Directors of the Company at a meeting held March 25, A. D. 1907, to wit:

"RESOLVED, that the President, Vice-President or an Acting-President is hereby authorized, empowered and directed to make and appoint such agents and to execute such Powers of Attorney to accept process for and on behalf of this Company, or to authorize the said attorneys and agents to execute Bonds, undertakings or writings obligatory in the nature thereof, for and on behalf of this Company, as shall be needful, and to the same extent and effect as though said appointments were severally made by separate action of the Board of Directors in each instance, and the Secretary or Assistant Secretary is hereby authorized, empowered and directed to authenticate such appointments, affixing the corporate seal of the Company to the same" 68 69

has made, constituted and appointed, and by these presents doth make, constitute and appoint D. Clinton Mackey and Wight V. Abbott, of the City, County and State of New York, or either of them, its true and lawful attorneys-in-fact, with full power and authority to sign, seal, acknowledge and deliver in its name, place and stead, as surety, Bonds, undertakings or writings obligatory in the nature thereof, and when such Bonds, undertak-

70 ings or writings obligatory are signed by the said D. Clinton Mackey and Wight V. Abbott, or either of them, as attorneys-in-fact, to bind the Company as fully and to the same extent as if said Bonds, undertakings or writings obligatory in the nature thereof were executed by the Executive Officers of this Company, at its Home Office in the City of Chicago, State of Illinois, and the Company hereby ratifies and confirms all that its said attorneys-in-fact may do or lawfully cause to be done in the premises by virtue of these presents.

IN TESTIMONY WHEREOF, the Illinois Surety Com-
71 pany has caused these presents to be signed by its Acting President, attested by its Secretary and its corporate seal to be hereunto affixed, this 15th day of January, A. D. 1909.

ILLINOIS SURETY COMPANY,

[SEAL.] By JAMES S. HOPKINS,
Acting President.

Attest:

H. W. WATKINS,
Secretary.

I, MARSHALL A. DUNNING, Asst. Secretary of the Illinois Surety Company, hereby certify that the
72 above Power of Attorney is a true copy of the original records of said Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said corporation, this 17th day of May, 1909, at Chicago, Illinois.

MARSHALL A. DUNNING,
Asst. Secretary.

STATEMENT OF FINANCIAL CONDITION OF ILLINOIS SURETY COMPANY. 73

At the close of business, March 31, 1909.

ASSETS.

Stocks and Bonds	$427,060.93	
Accrued Interest	4,104.54	
Bills Receivable, secured by collateral	3,844.73	
Outstanding Premiums ..	46,256.12	
Cash in Office and Depositories 74	47,972.07	
		$529,238.39

LIABILITIES.

Capital Stock	$250,000.00	
Surplus	50,000.00	
Collateral Deposits	4,363.21	
Reserve for Unadjusted Losses	19,498.39	
Due for Re-Insurance ...	5,365.57	
Commissions Accrued, not due	12,058.48	
Reserve for Re-Insurance	123,201.35	
Undivided Profits	64,751.39	
		$529,238.39 75

CITY AND COUNTY OF NEW YORK, } ss.:
State of New York, }

I, WIGHT V. ABBOTT, Attorney-in-Fact of the Illinois Surety Company, do hereby certify that the foregoing is a true and correct copy of the statement of assets and liabilities of the said Company at the close of business, March 31, 1909.

76 IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Company, this 27th day of August, 1909.

WIGHT V. ABBOTT,
[SEAL.] Attorney-in-Fact.

Subscribed and sworn to before me this 27th day of August, 1909.

JOSEPH E. R. KUNZMANN,
Commissioner of Deeds for the City of New York,
[SEAL.] Residing in the Borough of Brooklyn.

77 Due personal service of a copy of the within Bond is hereby acknowledged on behalf of the appellee, Pere Baglin, for himself and the other members of the Order, this 31st day of August, 1909.

C. A. L. MASSIE,
Attorney for Defendant-in-Error.

Approved as to form and also as to sufficiency of sureties with reservation, however, to the Deft. in Error, of the right at any time to examine the proper officers of the Surety Company under oath, touching its assets, liabilities and financial condition generally. C. M.
78 Hough, U. S. Dist. Judge.—U. S. Circuit Court, Southern District N. Y.—Filed Aug. 28, 1909.—John A. Shields, Clerk.

NOTE.—A similar Bond was filed in connection with the appeal on the 24th day of August, 1909.

By the Honorable Charles M. Hough, one of the Judges of the Circuit Court of the United States for the Southern District of New York, in the Second Circuit, to Pere Alfredo Luis Baglin, Procureur of the Order of the Carthusian Monks' Convent la Grande Chartreuse, for himself and all of the other Members of the said Order, Greeting: 79

You are hereby cited and admonished to be and appear before a United State Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, on the 22nd day of September, 1909, pursuant to a writ of error filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein Cusenier Company is plaintiff in error and appellant, and you are defendant in error and appellee to show cause, if any there be, why the order in said writ of error mentioned should not be corrected and speedy justice should not be done in that behalf. 80

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 26th day of August, in the year of our Lord one thousand nine hundred and nine, and of the Independence of these United States the one hundred and thirty-third. 81

C. M. Hough,
Judge of the District Court of the United States for the Southern District of New York, in the Second Circuit.

Due personal service of this citation is hereby acknowledged on behalf of the appellee, Pere Bag-

82 lin, for himself and the other members of the Order, this 27th day of August, 1909.

C. A. L. MASSIE,
Of Counsel for Baglin et al Defdts-in-error.

(Endorsed)—United States Circuit Court of Appeals for the Second Circuit.—Cusenier Company, Plaintiff in Error *vs.* Pere Baglin, etc., Defendant in Error.—Citation.—Adolph L. Pincoffs, of Counsel for Plaintiff in Error, office and Post Office address, 120 Broadway, Borough of Manhattan, New York City.—U. S. Circuit Court, Southern District, N. Y.—Filed
83 Aug. 28, 1909.—John A. Shields, Clerk.

BY THE HONORABLE CHARLES M. HOUGH, ONE OF THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN THE SECOND CIRCUIT TO PERE ALFREDO LUIS BAGLIN, PROCUREUR OF THE ORDER OF THE CARTHUSIAN MONKS CONVENT LA GRANDE CHARTREUSE, FOR HIMSELF AND ALL OF THE OTHER MEMBERS OF THE SAID ORDER, GREETING:

84 You are hereby cited and admonished to be and appear before a United States Circuit Court of Appeals for the Second Circuit, to be holden at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, on the 22nd day of Sept., 1909, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the Southern District of New York, wherein Cusenier Company is appellant, and you are appellee, to show cause, if any there be, why the order in said appeal mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 24 day of August, 1909, in the year of our Lord one thousand nine hundred and nine, and of the Independence of these United States the one hundred and thirty-third. 85

C. M. HOUGH,
Judge of the District Court of the United States for the Southern District of New York, in the Second Circuit.

Due personal service of .this citation is hereby asknowledged on behalf of the appellee, Pere Baglin, for himself and the other members of the Order, this 27 day of August, 1909. 86

C. A. L. MASSIE,
Of Counsel for Baglin *et al.*
(Complts.—Appellees).

(Endorsed)—Circuit Court of the United States for the Southern District of New York.—Pere Alfredo Luis Baglin, Superior-General of the Order of Carthusian Monks, etc., *vs.* Cusenier Company.—Citation.—Adolph L. Pincoffs, of Counsel for Defendant, office and Post Office address, 120 Broadway, Borough of Manhattan, New York City.—U. S. Circuit Court, Southern District, N. Y.—Filed Aug. 28, 1909. —John A. Shields, Clerk. 87

88 UNITED STATES OF AMERICA, }
Southern District of New York. } ss:

I, JOHN A. SHIELDS, Clerk of the Circuit Court of the United States of America, for the Southern District of New York, in the Second Circuit, do hereby Certify that the foregoing pages, numbered from one to 33 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the cause entitled Pere Alfredo Louis Baglin, Procureur of the Order of the Carthusian Monks Convent la Grande Chartreuse, Complt.-Appellee, against Cusenier Company, Defendant-Appellant, as the same remain of record
89 and on file in my office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 6th day of October, in the year of our Lord One Thousand Nine Hundred and Nine, and of the Independence of the said United States the One Hundred and Thirty-fourth.

JOHN A. SHIELDS,
[SEAL.] Clerk.

90

United States Circuit Court of Appeals for the Second Circuit.

No. 205, October Term, 1909.

Argued November 8, 1909; Decided November 8, 1909.

PERE ALFREDO LUIS BAGLIN, Superior-General, etc., Complainant-Appellee and Defendant-in-Error,

vs.

THE CUSENIER COMPANY, Defendant-Appellant and Plaintiff-in-Error.

Appeal from and Writ of Error to the Circuit Court of the United States for the Southern District of New York.

Before Lacombe, Coxe, and Ward, Circuit Judges.

We are satisfied it was error to hold defendant in contempt for translating the whole or any part of the label which the court said it might use, the court having expressly stated that such label might be translated into any language. No mistranslation is proved.

Order reversed.

A. L. Pincoffs, for Plaintiff-in-Error and Appellant.
Ralph L. Scott, for Defendant-in-Error and Appellee.

At a Stated Term of the United States Circuit Court of Appeals, in and for the Second Circuit, Held at the Court Rooms in the Post Office Building, in the City of New York, on the 18th Day of November, One Thousand Nine Hundred and Nine.

Present: Hon. E. Henry Lacombe, Hon. Alfred C. Coxe, Hon. Henry G. Ward, Circuit Judges

PERE ALFREDO LUIS BAGLIN, Superior-General, etc., Complainant-Appellee and Defendant-in-Error,

vs.

THE CUSENIER COMPANY, Defendant-Appellant and Plaintiff-in-Error.

Appeal from and Error to the Circuit Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the Circuit Court of the United States, for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that the order of said Circuit Court be and it hereby is reversed with costs.

It is further ordered that a Mandate issue to the said Circuit Court in accordance with this decree.

E. H. L.
A. C. C.

Endorsed: United States Circuit Court of Appeals, Second Circuit. Pere Alfredo Baglin vs. Cusenier Co. Order for Mandate. United States Circuit Court of Appeals, Second Circuit. Filed Nov. 18, 1909. William Parkin, Clerk.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby Certify that the foregoing pages, numbered from 1 to 33 inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of Pere Alfredo Luis Baglin, Superior-General, etc., Complainant-Appellee, and Defendant in Error, against The Cusenier Company, Defendant-Appellant, and Plaintiff in Error, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 17th day of December in the year of our Lord One Thousand Nine Hundred and Nine and of the Independence of the said United States the One Hundred and thirty-fourth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

WM. PARKIN, *Clerk.*